S. HRG. 101-400

INDIAN DEVELOPMENT FINANCE CORPORATION ACT
INDIAN ECONOMIC DEVELOPMENT ACT OF 1989
IMPLEMENTATION OF THE 1988 INDIAN FINANCING ACT AMENDMENTS

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

S. 143

TO ESTABLISH THE INDIAN DEVELOPMENT FINANCE CORPORATION

AND

S. 1203

A BILL TO ENCOURAGE INDIAN ECONOMIC DEVELOPMENT

AND

OVERSIGHT HEARING ON THE IMPLEMENTATION OF THE 1988 INDIAN FINANCING ACT AMENDMENTS

JULY 27, 1989
WASHINGTON, DC

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INDIAN DEVELOPMENT FINANCE CORPORATION ACT; INDIAN ECONOMIC DEVELOPMENT ACT OF 1989; AND OVERSIGHT ON THE IMPLEMENTATION OF THE 1988 INDIAN FINANCING ACT AMENDMENTS

THURSDAY, JULY 27, 1989

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:05 a.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye and McCain.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA, VICE CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

Senator MCCAIN. The Senate Select Committee on Indian Affairs will come to order.

Good morning. I would like to welcome everyone to the committee's hearing on Indian economic development issues.

Senator Inouye is stuck in traffic and he should be here momentarily. He has asked me to go ahead and begin the hearings.

This morning we will be taking testimony from the Administration represented by the Honorable Doctor Eddie Brown, Assistant Secretary for Indian Affairs of the United States Department of the Interior regarding S. 143, the Indian Development Finance Corporation Act. Doctor Brown will also be responding to a number of questions we have raised regarding the administration of the Indian Financing Act programs by the Bureau of Indian Affairs.

Following the Administration panel will be representatives of the Navajo Nation, the Laguna Pueblo, the National Center for American Indian Enterprise Development, the Council of Energy Resource Tribes, the Native American Industrial Trade Association, and a representative of the U.S. West Communications Corporation, Mr. David Brunt, who also serves as a member of the Navajo Nation's Tax Commission. In addition to the other issues before the committee, these non-governmental witnesses will discuss their views of the proposal that I have sponsored, S. 1203, the Indian Economic Development Act of 1989.

As the members of this committee know, Senator Inouye has visited virtually every part of Indian country over the past several years. He has gone onto the reservations of Indian nations, tribes,

and bands in the Northwest, The Southwest, the Great Plains, Oklahoma, California, and Alaska. Everywhere that Senator Inouye has gone he has seen the effects of longstanding and deep-seated poverty.

Because of a lack of economic opportunities and the healthy self-esteem that comes from productive employment, the Native American people all across this country experience the most severe social problems of any other group in this country. The unemployment rate on the majority of Indian reservations is simply incomprehensible to the average American. During the height of the so-called Great Depression in the 1930s, unemployment averaged 25 to 30 percent. In 1989 the average rate in Indian Country is 52 percent.

I believe—and I know that the other members of this committee believe—that these economic conditions in Indian Country are a national disgrace. These problems compel us to seek out and pursue every possible solution including, most particularly, those ideas that are represented in the legislation before this committee today, S. 143, the Indian Development Finance Corporation Act, which would establish a financial institution which is largely modeled after the World Bank. This is a proposal which has been ten years in the making and represents the creative thinking of a great many Indian leaders and technical experts.

The bill would authorize an appropriation of $25 million over 2 years, a very modest sum in comparison with the funds that the United States has contributed to the World Bank over the years.

The Indian Economic Development Act of 1989, S. 1203, would authorize a very powerful set of investment incentives in the form of Federal tax credits for private investments in Indian Country. I look forward to the views of our witnesses concerning this legislation. Since this bill amends the tax code, it has been referred to the Finance Committee. But I believe it is quite appropriate for this committee to take testimony regarding the Indian policy ramifications of the bill and its potential impact on the economic challenges in Indian country.

[Text of S. 143 and S. 1203 follows:]

101ST CONGRESS
1ST SESSION

S. 143

To establish the Indian Development Finance Corporation.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 3), 1989

Mr. INOUYE introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To establish the Indian Development Finance Corporation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Indian Development Finance Corporation Act".

CONGRESSIONAL FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) a special relationship has existed between the United States and the Indian tribes which is recognized in clause 3, section 8, article I of the United States Constitution,

(2) Congress, through statutes, treaties and the exercise of administrative authorities, has implemented the Federal Government's responsibility for the protection and preservation of Indian tribes and their resources,

(3) despite the availability of abundant, natural resources on Indian lands and a rich, cultural legacy which places great value on self-determination, self-reliance and independence, American Indians and Alaskan Natives experience poverty and unemployment along with the associated incidences of social pathology, to an extent unequaled by any other group in America,

(4) the reasons for such unparalleled poverty and unemployment have been widely studied and documented by the Congress, the General Accounting Office, the United States Department of the Interior, private academic institutions and the Indian tribes themselves and that such studies have consistently identified as fundamental obstacles to balanced economic growth and progress—

(A) the very limited availability of long term development capital and sources of financial credit necessary to support the development of a private

sector economy in Indian country comprised of Indian owned business enterprises,

(B) the lack of effective control by the Indians over their own lands and resources, and

(C) the scarcity of experienced Indian managers and technicians,

(5) previous efforts of the Federal Government directed at stimulating Indian economic development through the provision of grants, direct loans, loan guarantees, and interest subsidies have fallen far short of their objectives due to—

(A) inadequate funds,

(B) lack of coordination,

(C) arbitrary project selection criteria,

(D) politicalization of the delivery system, and

(E) other inefficiencies characteristic of a system of publicly administered financial intermediation, and

(6) the experience acquired by multilateral lending institutions among the so-called lesser developed countries has demonstrated the value and necessity of development financing institutions in achieving economic growth in underdeveloped economies and societies which are strikingly similar to Indian and Alaskan

Native communities in relation to such matters as control over natural resource management and the absence of experienced, indigenous managers and technicians, as well as the availability of long term development capital and private sources of financial credit.

(b) It is hereby declared to be the policy of Congress that, in fulfillment of its special and longstanding responsibility to the Indian tribes, the Federal Government should provide assistance to the Indian people in their efforts to break free from the devastating effects of extreme poverty and unemployment and achieve lasting economic self-sufficiency through the development of the private sector of tribal economies by establishing a federally chartered, mixed ownership development financing institution which shall provide a broad range of financial intermediary services including working capital, direct loans, loan guarantees and project development assistance utilizing the proven efficiencies of the private market mode of operation.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) The term "Indian" means any person who is a member of any Indian tribe.

(2) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, which is recognized by the United States as eligible for the special programs and services provided by

the United States to Indians because of their status as Indians including any Alaska Native village or regional or village corporation as defined in, or established under, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(3) The term "reservation" means any Indian reservation, public domain Indian allotment, or former Indian reservation in Oklahoma.

(4) The term "tribal organization" means the governing body of any Indian tribe or any entity established, controlled, or owned by such governing body.

(5) The term "Indian business enterprise" means any commercial, industrial or business entity—

(A) at least 51 percent of which is owned by one or more Indian tribes or Indians who are members of Indian tribes which are shareholders of the Corporation,

(B) which produces or furnishes goods, services, or facilities, which is operated, or organized on a for-profit basis, and

(C) whose—

(i) principal place of business is located within, or adjacent to, the boundaries of an Indian reservation or land held by any Alaska Native village or regional or village

corporation (as defined in, or established under, the provisions of the Alaska Native Claims Settlement Act), or

(ii) principal business activities in addition to the production of a stream of income are determined by the Corporation to be directly beneficial to an Indian tribe, to contribute to the economy of such Indian tribe, and to have a significant impact on the entrepreneurial and employment opportunities and levels within an Indian reservation or within Indian lands.

Such term includes any subsidiary entity which is owned and controlled by any commercial, industrial or business activity described in the preceding sentence.

(6) The term "Corporation" means the Indian Development Finance Corporation established under section 101(a).

(7) The term "Secretary" means the Secretary of the Interior.

CONSTRUCTION OF THIS ACT

SEC. 4. Except as may be specifically provided in this Act, nothing in this Act may be construed to—

(1) affect the sovereign immunity of any Indian tribe,

(2) authorize the Corporation to acquire any trust assets of an Indian tribe, or

(3) diminish the trust obligation of the United States to any Indian tribe or any member of an Indian tribe.

TITLE I—ESTABLISHMENT OF CORPORATION

CREATION

SEC. 101. (a) There is hereby established the Indian Development Finance Corporation.

(b) The Corporation shall have succession until dissolved by Act of Congress. Only the Congress shall have the authority to revise or amend the charter of the Corporation.

FUNCTIONS

SEC. 102. (a) It shall be the duty of the Corporation to—

(1) assist in strengthening Indian tribal economies through the development of Indian business enterprises whose activities are directed at contributing to such economies by having a significant positive impact on the employment opportunities within Indian reservations or Indian lands of tribal members;

(2) provide development capital through the financial services that the Corporation is authorized to provide under subsections (b), (c), and (d);

(3) encourage the development of new and existing Indian business enterprises eligible for its assist-

ance by providing and coordinating the availability of—

(A) long term capital and working capital,

(B) loans, loan guarantees and other forms of specialized credit, and

(C) technical and managerial assistance and training;

(4) maintain broad based control of the Corporation in its voting stockholders; and

(5) encourage active participation in the Corporation by Indian tribes by ownership of its equity securities.

(b)(1) The Corporation may—

(A) make loans or commitments for loans to any Indian business enterprise, or

(B) purchase, insure or discount any obligations of an Indian business enterprise, if such enterprise meets the requirements of paragraph (2).

(2) An Indian business enterprise meets the requirements of this paragraph if the Corporation makes an independent determination that—

(A) such enterprise has or will have—

(i) a sound organizational and financial structure,

(ii) income in excess of its operating costs,

(iii) assets in excess of its obligations, and

(iv) a reasonable expectation of a continuing demand for—

(I) its production, goods, commodities, or services, or

(II) its facilities, and

(B) the loan or obligation of such enterprise will be fully repayable in accordance with the terms and conditions of such loan or obligation.

(3)(A) In setting the terms, rates, and charges for loans made under this subsection the objective of the Corporation shall be to provide the type of credit needed by Indian business enterprises at the lowest reasonable cost and on a sound business basis, taking into account—

(i) the cost of money to the Corporation,

(ii) the necessary reserve and expenses of the Corporation, and

(iii) the technical and other assistance attributable to loans made available by the Corporation under this subsection.

(B) The terms of any loan made under this subsection may provide for interest rates which vary from time to time during the repayment period of the loan in accordance with the rates being charged by the Corporation for new loans at such times.

(4) The proceeds of a loan made under this subsection may be advanced or reloaned by the borrower to its members or stockholders for the development of individually owned businesses on or adjacent reservations, or land held by any Alaska Native village or regional or village corporation (as defined in, or established under, the provisions of the Alaska Native Claims Settlement Act), under circumstances permitted under the bylaws or rules of the Corporation.

(c)(1) The Corporation may guarantee up to, but not exceeding, 90 percent of the principal and interest of any loan made by any State or federally chartered lending institution to any Indian business enterprise if—

(A) such loan is to an Indian business enterprise that meets the requirements of subsection (b)(2), and

(B) such loan was made on terms and conditions (including the rate of interest) which would be permissible terms and conditions if such loan were a direct loan made by the Corporation.

(2) The Corporation may impose a charge for any loan guarantee made under this subsection.

(3) No loan may be guaranteed by the Corporation under this subsection if the income from such to the lender is excludable from such lender's gross income for purposes of chapter 1 of the Internal Revenue Code of 1986.

(4) Any loan guarantee made under this subsection shall be assignable to the extent provided in the contract of guarantee entered into by the Corporation.

(5) Any guarantee made under this subsection shall be uncontestable, except in the case of fraud or misrepresentation of which the holder had actual knowledge at the time he acquired the loan.

(6) The Corporation, in lieu of requiring the original lender to service a loan guaranteed under this subsection until final maturity or liquidation, may purchase such guaranteed loan for an amount equal to the balance of the principal and the amount of interest accrued thereon without penalty if the Corporation determines that the purchase would not be detrimental to the interests of the Corporation and—

(A) the liquidation of such guaranteed loan would result in the insolvency of the borrower or deprive the borrower of assets essential to its continued operation,

(B) such guaranteed loan will be repayable with revision of the loan rates, terms, payment periods, or other conditions consistent with loans made by the Corporation under subsection (b), and

(C) the lender or other holder of such guaranteed loan is unwilling to make such revision.

(d)(1) For purposes of providing long-term capital and working capital to Indian business enterprises, the Corpora-

tion is authorized to purchase, or make commitments to purchase, no more than 30 percent of the equity or ownership interest in any Indian business enterprise if the Corporation determines, after a full and complete appraisal of all project and business plans associated with the investment taking into account the criteria set forth in subsection (b)(2) that such an investment does not expose the Corporation to any unreasonable business risks considering the applicable standards prevailing in the field of development finance as applied to Indian economic development (or, in light of the socio-economic, political and legal conditions unique to Indian reservations).

(2) The Corporation is also authorized to supervise or participate in the management of Indian business enterprises in which an investment has been made under paragraph (1) according to such terms and conditions as are agreed to by the Corporation and the principals of the enterprise, including the assumption of a directorship in the corporate body of such Indian business enterprise by an officer of the Corporation.

GENERAL POWERS

SEC. 103. In carrying out the provisions of this Act, the Corporation shall have the power, consistent with the provisions of this Act—

(1) to adopt and alter a corporate seal, which shall be judicially noticed,

(2) to make agreements and contracts with persons, Indian tribes, and private or governmental entities and to make payments or advance payments under such agreements or contracts without regard to section 3324 of title 31, United States Code, except that the Corporation shall provide financial assistance only in accordance with this Act,

(3) to—

(A) lease, purchase, accept gifts or donations of, or otherwise to acquire,

(B) own, hold, improve, use, or otherwise deal in or with, and

(C) sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of,

any property, real, personal, or mixed, or any interest therein,

(4) to sue and be sued in its corporate name and to complain and defend in any court of competent jurisdiction,

(5) to represent itself, or to contract for representation, in all judicial, legal, and other proceedings,

(6) to make provision for and designate such committees, and the functions thereof, as the Board of Directors may deem necessary or desirable,

(7) with the approval of the agency concerned, to make use of services, facilities, and property of any board, commission, independent establishment, or executive agency or department of the executive branch in carrying out the provisions of this Act and to pay for such use (such payments to be credited to the applicable appropriation that incurred the expense),

(8) to use the United States mails on the same terms and conditions as the executive departments of the United States Government,

(9) to obtain insurance or make other provisions against losses,

(10) to participate with one or more other financial institutions, agencies, instrumentalities, trusts, or foundations in loans or guarantees made under this Act on terms as may be agreed upon,

(11) to accept guarantees from other agencies for which loans made by the Corporation may be eligible,

(12) to establish, as soon as practicable, regional offices in order to more efficiently serve the widely disbursed Indian population,

(13) to buy and sell—

(A) obligations of, or instruments insured by, the United States or any agency or instrumentalities thereof, or

(B) securities backed by the full faith and credit of any such agency or instrumentality,

(14) to make such investments as may be authorized by the Board of Directors of the Corporation,

(15) to establish such offices within the Corporation as may be necessary including offices for—

(A) Project Development,

(B) Project Evaluation and Auditing,

(C) Fiscal Management,

(D) Research and Development, and

(E) any other offices as may from time to time be authorized by the Board of Directors, and

(16) to exercise all other lawful powers necessarily or reasonably related to the establishment of the Corporation in order to carry out the provisions of this Act and the exercise of its powers, purposes, functions, duties, and authorized activities.

BOARD OF DIRECTORS

SEC. 104. (a) The powers of the Corporation shall be vested in the Board of Directors.

(b)(1) The Board of Directors shall consist of the following 15 members:

(A) 1 officer of the United States Government designated by the Secretary of the Interior,

(B) 13 individuals appointed by the President by and with the advice and consent of the Senate, and

(C) the President of the Corporation.

(2)(A) Of the members of the Board of Directors described in paragraph (1)(B)—

(i) at least 7 members shall be Indians, and

(ii) no more than 7 members may be members of the same political party.

(B) In making appointments under paragraph (1)(B) and paragraph (4), the President shall take into account the experience of the individual in private business enterprises and in development or commercial finance and shall consult with, and receive recommendations from Indian tribes.

(3)(A) Of the initial members of the Board of Directors appointed by the President under paragraph (1)(B)—

(i) 3 members shall have a term of office of 1 year,

(ii) 3 members shall have a term of office of 2 years,

(iii) 3 members shall have a term of office of 3 years, and

(iv) 4 members shall have a term of office of 4 years.

The term of office assigned to each of these initial members of the Board of Directors shall be determined by the President at the time of appointment.

(B) Except as otherwise provided in this paragraph, the term of office for any members of the Board of Directors described in paragraph (1)(B) shall be 4 years.

(4) If a vacancy occurs on the Board of Directors prior to the expiration of the term of office to which a member described in paragraph (1)(B) was appointed, the President shall appoint an individual, by and with the consent of the Senate, to fill such vacancy until the expiration of such term of office.

(5) A member of the Board of Directors may be removed from office by the President only for neglect of duty or malfeasance in office.

(c)(1) The Board of Directors shall establish the policies of the Corporation and shall supervise the management of the Corporation.

(2)(A) A majority of the Board of Directors shall constitute a quorum.

(B) Except as provided in subparagraph (C), any action of the Board of Directors shall be effected by majority vote of the members of the Board of Directors.

(C) The Board of Directors may take an action which is contrary to a policy adopted, or decision made, by the shareholders of the Corporation in an election held under the bylaws of the Corporation only if two-thirds of the members of the Board of Directors vote to take such contrary action.

(3) The Board of Directors shall annually elect from among the members described in subsection (b)(1)(B) a Chairman and Vice Chairman.

(4) The Board of Directors shall adopt, and may amend, such bylaws as are necessary for the proper management and functioning of the Corporation.

(5)(A) The Board of Directors shall meet at any time pursuant to the call of the Chairman and as may be provided by the bylaws of the Corporation, but not less than quarterly.

(B) Subject to such rules adopted by the Board of Directors as are necessary for the orderly conduct of business, all meetings of the Board of Directors shall be open to representatives of Indian tribes, Indian business enterprises, and Indian organizations and any individual who has an identifiable interest in the affairs of the Corporation. The Board of Directors may meet in private executive session if the matter under discussion in such session involves any matter which may impinge on the right of privacy of any individual.

(d) Each member of the Board of Directors not otherwise employed by the Federal Government or a State government shall receive compensation at a rate equal to the daily rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code, for each day, including traveling time, the member is engaged in the actual performance of duties as a member of the Board of Directors. A

member of the Board of Directors who is an officer or employee of the United States Government or of a State government shall serve without additional compensation. All members of the Board of Directors shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

OFFICERS; EMPLOYEES

SEC. 105. (a) The Board of Directors shall appoint a President of the Corporation. The President of the Corporation may be removed from office by the Board of Directors in accordance with the bylaws of the Corporation.

(b) The President of the Corporation shall serve as the chief executive officer of the Corporation. Subject to the direction of the Board of Directors and the general supervision of the Chairman, the President of the Corporation shall have the responsibility for carrying out the policies and functions of the Corporation, and shall have authority over all personnel and activities of the Corporation.

(c) The President of the Corporation, with the approval of the Board of Directors, shall have the authority to appoint and fix the compensation and duties of such officers and employees as may be necessary for the efficient administration of the Corporation. Such appointments and compensation may be made without regard to the provisions of title 5, United States Code, governing appointments in the competi-

tive service, and chapter 51 and subchapter III of chapter 53 of title 5, United States Code.

CONFLICTS OF INTEREST AND FINANCIAL DISCLOSURE

SEC. 106. (a) The financial disclosure provisions of the Ethics in Government Act of 1978 (92 Stat. 1824; Public Law 95–521) applicable to individuals occupying positions compensated under the Executive Schedule shall apply to the members of the Board of Directors, the officers of the Corporation and to employees of the Corporation whose position is compensated at a rate equivalent to that payable for grade GS–16 or above of the General Schedule established by chapter 53 of title 5, United States Code. The financial disclosure provisions of the Ethics in Government Act of 1978 shall apply to the Corporation as if it were a Federal agency.

(b)(1) Except as permitted by paragraph (3), no member of the Board of Directors shall vote on any matter respecting any application, contract, claim, or other particular matter pending before the Corporation, in which, to his knowledge—

(A) such member,

(B) his spouse, child, or partner,

(C) an organization (other than the Corporation) in which he is serving as officer, director, trustee, partner, or employee, or

(D) any person or organization with whom he is negotiating, or has any arrangement concerning, prospective employment,

has a financial interest.

(2) Action by any member of the Board of Directors contrary to the prohibition contained in paragraph (1) shall be cause for removal of such member pursuant to section 104(b)(5), but shall not impair or otherwise affect the validity of any otherwise lawful action by the Corporation in which such member participated.

(3) The prohibition contained in paragraph (1) shall not apply if the member first advises the Board of Directors of the nature of the particular matter in which he or she proposes to participate and makes full disclosure of such financial interest, and the Board of Directors determines by majority vote that the financial interest is too remote or too inconsequential to affect the integrity of such member's services for the Corporation in that matter. The member involved shall not participate in such determination.

(c) Subsection (a) of section 207 of title 18, United States Code (and subsections (f), (h), and (j) of such section to the extent they relate to subsection (a)) shall apply to former members of the Board of Directors, officers, and employees of the Corporation as if they were former officers or employees of the executive branch of the United States Government.

Such section shall apply to the Corporation as if it were an agency of the executive branch of the United States Government.

ANNUAL MEETINGS

SEC. 107. (a) The Corporation shall hold an annual meeting of its shareholders which shall be open to the public. At such meeting, the Corporation shall give a full report of its activities during the year and its financial condition and may present proposals for future action and other matters of general concern to shareholders and Indian business enterprises eligible for services from the Corporation.

(b) Shareholders and representatives of Indian business enterprises may present motions or resolutions at the annual meeting of shareholders relating to matters within the scope of this Act and may participate in the discussion thereof and other matters on the agenda of such meeting.

(c) At least 30 days notice of the time and place of the annual meeting required under subsection (a) shall be given to all shareholders.

(d) Each member tribe shall be entitled to vote their common stock on all matters before the annual shareholders meeting.

REPORTS TO CONGRESS

SEC. 108. (a) The Board of Directors of the Corporation shall report annually to the appropriate committees of the Congress on the Corporation's capital, operations, and finan-

cial condition. Such report shall include recommendations for legislation needed to improve the services of the Corporation.

(b) At the close of the first calendar year beginning after enactment of this Act, the Corporation shall submit to the Congress a comprehensive, 5-year organizational development plan which includes:

(1) financial projections,

(2) a description of a corporate structure and locations, and

(3) operational guidelines, particularly the coordinating relationship the Corporation has, or will have, with Federal domestic assistance programs which allocate financial resources and services to Indian tribes and reservations for economic and business development purposes.

(c) By no later than the date that is 3 years after the date of enactment of this Act, the Secretary shall submit to the Congress a report on an evaluation of the activities of the Corporation that the Secretary shall conduct for purposes of determining whether there is excessive duplication of services between the activities of the Corporation and the credit and financial activities of the Secretary, conducted through the Bureau of Indian Affairs, under the authority of the Indian Financing Act of 1974 (25 U.S.C. 1451, et seq.). The report shall include recommendations on—

(1) appropriate actions that the Congress should take, and

(2) the advisability of transferring the administration of such credit and financial activities of the Secretary to the Corporation.

ADVISORY COUNCIL

SEC. 109. (a) There is hereby established the Advisory Council to the Indian Development Finance Corporation (hereafter in this section referred to as the "Council"), which shall provide advice on the policies and operations of the Corporation.

(b) The Council shall consist of—

(1) the Comptroller of the Currency,

(2) the Secretary of Interior, and

(3) the Chairman of the Board of Governors of the Federal Reserve System.

(c) The Council shall—

(1) recommend to the Board of Directors of the Corporation general policy directives,

(2) be available to provide financial and technical assistance upon request of the Board of Directors,

(3) transmit to the Board of Directors and the Congress an annual report with respect to the policies of the Corporation that contains data on the operations and policies of the Corporation, recommendations con-

cerning the Corporation, and such other data and material as the Council may deem appropriate, and

(4) make reports and recommendations to the Board of Directors as it may from time to time request or as the Council may consider necessary to more effectively or efficiently accomplish the purposes of this section or the purposes for which the Council is created.

(d) The Board of Directors of the Corporation shall keep the Council fully informed of its activities and shall provide the Council with such further information or data in its possession as the Council may deem necessary to the appropriate discharge of the responsibilities of the Council under this section.

CONFORMING AMENDMENTS

SEC. 120. (a) Paragraph (2) of section 9101 of title 31, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(K) the Indian Development Finance Corporation."

(b) Paragraph (3) of section 9107(c) of such title is amended by inserting "the Indian Development Finance Corporation," after "the Regional Banks for Cooperatives,".

(c) Paragraph (2) of section 9108(d) of such title is amended by inserting "the Indian Development Finance Corporation," after "the Regional Banks for Cooperatives,".

(d) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"President, Indian Development Finance Corporation.".

TITLE II—CAPITALIZATION

ISSUANCE OF STOCK

SEC. 201. (a)(1) The Corporation is authorized to issue shares of stock in the Corporation in an amount and of such class as may be determined by the Board of Directors subject to the provisions of this section.

(2) Shares of stock in the Corporation may only be issued to and may only be held by Indian tribes and the United States.

(3) The Corporation is authorized to redeem or repurchase any share of stock issued by the Corporation at a price determined by the Board of Directors.

(b)(1) The Corporation shall make an initial offering of a total of 2,100,000 shares of common stock of the Corporation for sale at $50 per share to Indian tribes.

(2) The number of such shares of stock required to be purchased by each Indian tribe in order to become a member of the Corporation shall be determined on the basis of an equitable formula established by the Board of Directors taking into account indicators of the economic condition of

each tribe applying for membership such economic indicators to be developed by the Board and thereafter applied on a uniform basis.

(3)(A) Twenty percent of the value of the stock to be purchased by each tribe as a condition of membership shall be paid into the Corporation in the form of cash or cash equivalent securities and 80 percent shall be in the form of a legally binding commitment available for call by the Board to meet the obligations of the Corporation but not for use of the Corporation in lending activities or for administrative expenses.

(B) For the purposes of this paragraph, the term "legally binding commitment" shall not include any trust assets except that contingent upon the approval of the Secretary, it may include callable assignments of income from specified trust sources.

(C) For the purpose of entering into such legally binding commitment, Indian tribes may enter into contracts providing for a limited waiver of sovereign immunity, except that such waivers of sovereign immunity shall be limited as specifically provided in such contracts and shall not extend beyond the terms of such contracts.

(c)(1) The Secretary is authorized to subscribe to 2,000,000 shares of capital stock in the Corporation.

(2) The Secretary—

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(A) shall, subject to availability of appropriations made in advance for this purpose, pay $20,000,000, representing 20 percent of the value of the shares of capital stock in the Corporation subscribed under paragraph (1), to the Corporation within a 2-year period beginning on the date of enactment of this Act, and

(B) beginning in fiscal year 1991, is authorized to agree on behalf of the United States to pay up to $80,000,000, representing 80 percent of the value of the shares of capital stock in the Corporation subscribed under paragraph (1), or any portion thereof, to the Corporation upon call of the Board of Directors of the Corporation. The amount of this request for funds to establish a reserve for loss, will be determined by the Secretary of the Interior and the Board of Directors based upon an assessment of need, taking into account a risk analysis of the investment and credit policies and practices of the Corporation. Any commitment to make such contributions shall be made subject to obtaining the necessary appropriations, and shall be made when funds are required to meet obligations of the Corporation for funds borrowed by the Corporation or for loans guaranteed by the Corporation, but not for use of the Corporation in lending activities of the Cor-

poration or for administrative expenses of the Corporation.

(3) The capital stock subscribed by the Secretary on behalf of the United States under paragraph (1)—

(A) shall be valued at $50 per share,

(B) shall be nonvoting stock,

(C) shall not accrue dividends, and

(D) may not be transferred to any person or entity other than the Corporation.

(d) The board shall establish policies for payment of dividends to the Corporation's shareholders to be based on sound business practices and fiscal management principles and which shall give a priority to providing a return on investment based on each shareholders pro-rata interest in income generated from the capital contribution of common stock shareholders as compared to income attributable to capital contributed by the United States.

(e) The stock or other securities or instruments issued by the Corporation shall, to the same extent as securities which are the direct obligations of the United States, be exempted securities, within the meaning of the laws administered by the Securities and Exchange Commission.

BORROWING AUTHORITY

SEC. 202. (a) The Corporation is authorized, subject, in any fiscal year, to appropriations made in advance, to issue bonds, notes, and other evidences of indebtedness. Such obli-

gations shall be issued at such times, bear interest at such rates, and contain such terms and conditions as the Board of Directors shall determine after consultation with the Secretary of the Treasury.

(b) The aggregate amount of obligations issued under subsection (a) shall not exceed an amount equal to—

(1) the product of ten multiplied by the sum of—

(A) the paid-in capital of the Corporation, plus

(B) retained earnings and profits of the Corporation, and

(2) the book value of callable capital represented by the total commitments of tribal shareholders and the $80 million subscribed to by the United States as provided for in section 201(c)(2)(B).

(c) An obligation issued under subsection (a) may be sold through an agent by negotiation, offer, bid, syndicate sale or otherwise and such transaction completed by book entry, wire transfer, or such other means as may be appropriate.

TITLE III—AUTHORIZATION OF APPROPRIATIONS

GENERAL OPERATIONAL EXPENSES

SEC. 301. In addition to amounts authorized to be appropriated under section 302, there are authorized to be appropriated—

(1) $2,000,000 for fiscal year 1990 for the purpose of carrying out the provisions of this Act,

(2) $2,500,000 for each of the fiscal years 1990, 1991, 1992, 1993, and 1994 for the purpose of project development activities under this Act, and

(3) such sums as may be necessary to carry out the provisions of this Act for each of the fiscal years 1991 and 1992.

AUTHORIZATIONS FOR PAID-IN CAPITAL STOCK

SEC. 302. There are authorized to be appropriated for each of the fiscal years 1990 and 1991, $10,000,000 for the purpose of carrying out the provisions of section 201(c)(2)(A). Such sums shall remain available until expended. Beginning in fiscal year 1992, such amounts, not to exceed a total of $80,000,000, are authorized to be appropriated for the purpose of carrying out the provisions of section 201(c)(2)(B).

101ST CONGRESS
1ST SESSION

S. 1203

A bill to encourage Indian economic development.

IN THE SENATE OF THE UNITED STATES

JUNE 20 (legislative day, JANUARY 3), 1989

Mr. MCCAIN (for himself, Mr. INOUYE, Mr. DECONCINI, Mr. GORTON, Mr. COCHRAN, and Mr. BURDICK) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

A bill to encourage Indian economic development.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.

(a) SHORT TITLE.—This Act may be cited as the "Indian Economic Development Act of 1989".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. PURPOSE.

It is the purpose of this Act to provide for the establishment of incentives in order to stimulate the creation of new jobs and employment training, to assist the development of reservation infrastructure, and to promote revitalization of economically distressed Indian reservations primarily by providing or encouraging tax relief at the Federal level.

SEC. 3. INVESTMENT TAX CREDIT FOR PROPERTY ON INDIAN RESERVATION.

(a) SECTION 38 PROPERTY.—Paragraph (1) of section 48(a) (defining section 38 property) is amended by striking "or" at the end of subparagraph (F), by striking the period at the end of subparagraph (G) and inserting "; or", and by adding after subparagraph (G) the following new subparagraph:

"(H) qualified Indian reservation property (within the meaning of subsection (t)) which is not otherwise section 38 property."

(b) AMOUNT OF CREDIT.—

(1) IN GENERAL.—Subsection (a) of section 46 (relating to amount of investment tax credit) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ", and", and by adding at the end thereof the following new paragraph:

"(4) in the case of qualified Indian reservation property, the Indian reservation percentage."

(2) INDIAN RESERVATION PERCENTAGE DEFINED.—Subsection (b) of section 46 is amended by adding at the end thereof the following new paragraph:

"(5) INDIAN RESERVATION PERCENTAGE.—For purposes of this subsection—

"In the case of qualified Indian reservation property which is:	The Indian reservation percentage is:
Reservation personal property (within the meaning of section 48(t)(2))	5
New reservation construction property (within the meaning of section 48(t)(3))	20
Reservation infrastructure investment (within the meaning of section 48(t)(4))	10."

(3) CONFORMING AMENDMENT.—Section 48(o) (defining certain credits) is amended by adding at the end thereof the following new paragraph:

"(4) INDIAN RESERVATION CREDIT.—The term 'Indian reservation credit' means that portion of the credit allowed by section 38 which is attributable to the Indian reservation percentage."

(c) DEFINITIONS AND TRANSITIONAL RULES.—Section 48 (relating to definitions and special rules) is amended by redesignating subsection (t) as subsection (u) and by inserting after subsection (s) the following new subsection:

"(t) QUALIFIED INDIAN RESERVATION PROPERTY.—

"(1) IN GENERAL.—The term 'qualified Indian reservation property' means property—

"(A) which is—

"(i) reservation personal property,

"(ii) new reservation construction property, or

"(iii) reservation infrastructure investment, and

"(B) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)).

"(2) RESERVATION PERSONAL PROPERTY DEFINED.—The term 'reservation personal property' means property—

"(A) for which depreciation is allowable under section 168,

"(B) which is not—

"(i) nonresidential real property,

"(ii) residential rental real property, or

"(iii) real property which has a class life of more than 12.5 years, and

"(C) which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation.

Property shall not be treated as 'reservation personal property' if it is used or located outside the Indian reservation on any regular basis.

"(3) NEW RESERVATION CONSTRUCTION PROPERTY DEFINED.—The term 'reservation construction property' means property described in clause (i), (ii), or (iii) of paragraph (2)(B)—

"(A) which is located in an Indian reservation,

"(B) which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation, and

"(C) which is originally placed in service by the taxpayer.

"(4) RESERVATION INFRASTRUCTURE INVESTMENT DEFINED.—

"(A) IN GENERAL.—The term 'reservation infrastructure investment' means reservation personal property which—

"(i) benefits the tribal infrastructure, and

"(ii) is available to the general public.

"(B) PROPERTY MAY BE LOCATED OUTSIDE THE RESERVATION.—For purposes of this paragraph, the term 'reservation personal property' in-

cludes property which would (but for its location outside the reservation) be Indian reservation property, but only if its purpose is to connect to existing tribal infrastructure in the reservation. Examples of property which may be described in this paragraph include roads, power lines, water systems, railroad spurs, and communication facilities.

"(5) REAL ESTATE RENTAL.—For purposes of this section, ownership (or leaseholding) of residential, commercial, or industrial real property within an Indian reservation for rental shall be treated as the active conduct of a trade or business in an Indian reservation."

(d) LODGING TO QUALIFY.—Paragraph (3) of section 48(a) (relating to property used for lodging) is amended—

(1) by striking "and" at the end of subparagraph (C),

(2) by striking the period at the end of subparagraph (D) and inserting ", and," and

(3) by adding at the end thereof the following new subparagraph:

"(E) new reservation construction property."

(e) RECAPTURE.—Subsection (a) of section 47 (relating to certain dispositions, etc., of section 38 property) is

amended by adding at the end thereof the following new paragraph:

"(10) SPECIAL RULES FOR INDIAN RESERVATION PROPERTY.—

"(A) IN GENERAL.—If, during any taxable year, property with respect to which the taxpayer claimed an Indian reservation credit—

"(i) is disposed of, or

"(ii) in the case of reservation personal property—

"(I) otherwise ceases to be section 38 property with respect to the taxpayer, or

"(II) is removed from the Indian reservation, converted, or otherwise ceases to be Indian reservation property,

the tax under this chapter for such taxable year shall be increased by the amount described in subparagraph (B).

"(B) AMOUNT OF INCREASE.—The increase in tax under subparagraph (A) shall equal the aggregate decrease in the credits allowed under section 38 by reason of section 46(a)(4) for all prior taxable years which would have resulted solely

from reducing the expenditures taken into account with respect to the property by an amount which bears the same ratio to such expenditures as the number of taxable years that the property was held by the taxpayer bears to the applicable recovery period under section 168(g)."

(f) BASIS ADJUSTMENT TO REFLECT INVESTMENT CREDIT.—Paragraph (3) of section 48(q) (relating to basis adjustment to section 38 property) is amended to read as follows:

"(3) SPECIAL RULE FOR QUALIFIED REHABILITATION AND INDIAN RESERVATION EXPENDITURES.—In the case of any credit determined under section 46(a) for—

"(A) any qualified rehabilitation expenditure in connection with a qualified rehabilitated building, or

"(B) any expenditure in connection with new reservation construction property (within the meaning of section 48(t)(3)),

paragraphs (1) and (2) of this subsection and paragraph (5) of subsection (d) shall be applied without regard to the phrase '50 percent of'."

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after December 31, 1988,

under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986.

SEC. 4. NONRECOGNITION OF GAIN ON THE SALE OF INDIAN RESERVATION PROPERTY WHERE REINVESTMENT IN SUCH PROPERTY OCCURS WITHIN 1 YEAR.

(a) IN GENERAL.—Part III of subchapter O of chapter 1 (relating to common nontaxable exchanges) is amended by adding at the end thereof the following new section:

"SEC. 1043. NONRECOGNITION OF GAIN ON THE SALE OF INDIAN RESERVATION PROPERTY WHERE REINVESTMENT IN SUCH PROPERTY OCCURS WITHIN 1 YEAR.

"(a) IN GENERAL.—No gain shall be recognized on the sale or exchange of Indian reservation property of the taxpayer if the proceeds realized from such sale or exchange are used by the taxpayer to acquire Indian reservation property within the qualified period.

"(b) INDIAN RESERVATION PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—The term 'Indian reservation property' means—

"(A) any tangible personal property which is acquired and placed in service by the taxpayer in an Indian reservation and which is used predomi-

nately by the taxpayer in the active conduct of an Indian reservation business within such reservation, and

"(B) any real property located in an Indian reservation which is acquired by the taxpayer and which is used predominately by the taxpayer in the active conduct of an Indian reservation business.

"(2) INDIAN RESERVATION BUSINESS.—The term 'Indian reservation business' means any person—

"(A) which is actively engaged in the conduct of a trade or business during the taxable year,

"(B) with respect to which at least 80 percent of such person's gross receipts for such taxable year are attributable to the active conduct of a trade or business which produces goods or provides services within an Indian reservation, and

"(C) with respect to which substantially all the tangible assets of such person are located within an Indian reservation.

"(c) QUALIFIED PERIOD.—For purposes of this section, the term 'qualified period' means the period which ends 12 months after the date of the sale or exchange of Indian reservation property.

"(d) BASIS OF ACQUIRED INDIAN RESERVATION PROPERTY.—If the acquisition of Indian reservation property by a taxpayer results in nonrecognition of any gain or loss on the sale or exchange of other Indian reservation property of such taxpayer under subsection (a), the basis of such taxpayer in the acquired Indian reservation property shall be the cost of such property—

"(1) decreased by the amount of gain which was not so recognized, or

"(2) increased by the amount of loss which was not so recognized.

If such acquired Indian reservation property consists of more than 1 item of property, the basis determined under the preceding sentence shall be allocated among such items in proportion to their respective costs.

"(e) STATUTE OF LIMITATIONS.—If the taxpayer during a taxable year sells or exchanges Indian reservation property at a gain, then—

"(1) the statutory period for the assessment of any deficiency attributable to any part of such gain shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of—

"(A) the taxpayer's intention not to acquire any Indian reservation property within the qualified period, or

"(B) a failure to make such purchase within the qualified period, and

"(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 381 (relating to carryovers in certain corporate acquisitions) is amended by inserting at the end thereof the following new paragraph:

"(27) INDIAN RESERVATION PROPERTY.—The acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of applying section 1043.".

(2) Subsection (a) of section 1016 (relating to adjustments to basis) is amended by striking "and" at the end of paragraph (23), by striking the period at the end of paragraph (24) and inserting "; and", and by adding at the end thereof the following new paragraph:

"(25) to the extent provided in section 1043(d) in the case of the property the acquisition of which result-

ed in nonrecognition of gain or loss in other property under section 1043(a).".

(3) Section 1223 (relating to holding period of property) is amended by redesignating paragraph (14) as paragraph (15) and by inserting after paragraph (13) the following new paragraph:

"(14) In determining the period for which the taxpayer has held property, the acquisition of which resulted under section 1043 in nonrecognition of the gain or loss on the sale or exchange of any other property, there shall be included the period during which such other property was held by such taxpayer prior to such sale or exchange.".

(4) Paragraph (4) of section 1245(b) (relating to limitations on gain from disposition of certain depreciable assets) is amended by striking "or 1033" and inserting ", 1033, or 1043".

(5) Paragraph (4) of section 1250(d) (relating to limitations on gain from disposition of certain depreciable realty) is amended—

(A) by striking out "or 1033" in subparagraphs (A) and (E) and inserting in lieu thereof ", 1033, or 1043", and

(B) by inserting "or 1043(a)" after "section 1033(a)(2)" in subparagraph (C)(ii).

(6) Paragraph (2) of section 6212(c) (relating to further deficiency letters restricted) is amended by inserting after subparagraph (E) the following new subparagraph:

"(F) Deficiency attributable to gain on sale of property, see section 1043(e).".

(7) Section 6504 (relating to cross references) is amended by adding at the end thereof the following new paragraph:

"(13) Gain on the sale or exchange of property, see section 1043(e).".

(c) CLERICAL AMENDMENT.—The table of sections for part III of subchapter C of chapter 1 is amended by inserting after the item relating to section 1042 the following new item:

"Sec. 1043. Nonrecognition of gain or loss on the sale of Indian reservation property where reinvestment in such property occurs within 1 year.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or exchanges after December 31, 1988.

SEC. 5. TARGETED JOBS CREDIT.

(a) MEMBERS OF INDIAN TRIBES ELIGIBLE FOR CREDIT.—Paragraph (1) of section 51(d) (defining members of targeted groups) is amended by striking "or" at the end of subparagraph (II), by striking the period at the end of sub-

paragraph (J) and inserting ", or" and by adding at the end thereof the following new subparagraph:

"(K) a member of an Indian tribe (as defined in section 103(b) of the Indian Self-Determination Act (25 U.S.C. 450b)) who is living in an area of an Indian reservation with respect to which the Secretary of the Interior accepts the certification of the tribal government with jurisdiction over such area that—

"(i) the area is one of pervasive poverty, unemployment, and general duties, and

"(ii) either—

"(I) the unemployment rate for such area, as determined by appropriate available data, was at least 2 times the national unemployment rate for the same period, or

"(II) at least 70 percent of the households living in the area have incomes below 80 percent of the median income of households of the political subdivision in which such area is located."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1988.

SEC. 6. INDIAN RESERVATION TAX CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end thereof the following new section:

"SEC. 30. INDIAN RESERVATION TAX CREDIT.

"(a) ALLOWANCE OF CREDIT.—

"(1) IN GENERAL.—Except as provided in paragraph (2), there shall be allowed as a credit against the tax imposed by this chapter an amount equal to the portion of the tax which is attributable to the taxable income from the active conduct of an Indian reservation business.

"(2) CREDIT NOT ALLOWED AGAINST CERTAIN TAXES.—The credit allowed under paragraph (1) shall not be allowed against the tax imposed by section 59A, 531, or 541.

"(b) AMOUNTS RECEIVED OUTSIDE THE RESERVATION.—In determining taxable income for purposes of subsection (a), income shall not be treated as attributable to the active conduct of an Indian reservation business if it is received outside of the Indian reservation. The preceding sen-

tence shall not apply to amounts received from a person who is not a related person.

"(c) INDIAN RESERVATION BUSINESS.—For purposes of this section—

"(1) IN GENERAL.—The term 'Indian reservation business' means any person—

"(A) which is actively engaged in the conduct of a trade or business on an Indian reservation during the taxable year,

"(B) with respect to which the income requirements of paragraph (2) are met, and

"(C) substantially all of the assets of which are located within the Indian reservation.

"(2) INCOME ELIGIBILITY REQUIREMENTS.—The requirements of this paragraph are met if:

"(A) 80 PERCENT TEST.—80 percent or more of the gross income of the trade or business for the 3-year period immediately preceding the close of the taxable year (or such portion of such period as may be applicable) was derived from sources within an Indian reservation.

"(B) 75 PERCENT TEST.—75 percent or more of the gross income for the period described in subparagraph (A) was derived from the active

conduct of a trade or business within an Indian reservation."

(b) CONFORMING AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 30. Indian reservation tax credit."

"(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1989.

Senator MCCAIN. Our first witness this morning is the Honorable Eddie Brown. Doctor Brown, please come forward. It is my pleasure to welcome you this morning. I believe this is your first hearing before this committee in your new, official position. Welcome.

[Prepared statement of Senator Inouye appears in appendix.]

STATEMENT OF HON. EDDIE F. BROWN, ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC, ACCOMPANIED BY RICHARD NEPHEW, HEAD, CREDIT AND FINANCE

Mr. BROWN. Thank you. Good morning.

I would respectfully ask that my prepared statement and attachments be made a part of the record of these proceedings.

Senator MCCAIN. Your prepared statement will appear in the record immediately following your oral presentation.

Mr. BROWN. I am pleased to have been invited to discuss the Administration's position on Senate bill 143, a bill to establish the Indian Development Finance Corporation, as well as our implementation on the Indian Financing Act Amendment of 1988.

Mr. Chairman, it was only a few weeks ago that I appeared before the committee to state to you my desire to work closely with Congress to carry forward the commitment of making the ideals of self-government and self-determination a reality for tribal government.

We hope to achieve this by first supporting tribal governments and understanding that tribal governments must play a central role in guiding economic development on Indian land. Secondly, that we also must assist tribal governments in creating realistic conditions for economic development, and by that I mean the infrastructure, an educated work force, roads, housing, support for Indian families, etc. And, thirdly, to assist tribes in attracting the type of economic development projects that result in what is stated the primary goal for economic development, and that is to create jobs and to afford Indian people a decent standard of living.

Now, within the next 90 days I will be discussing with elected officials of tribal governments their ideas on how we can best assist them in their economic development efforts. After we have had the opportunity to talk with many of the tribes, as well as individuals who have been successful in regards to economic projects, I would like to come back to the committee and discuss our ideas with you.

Now, Mr. Chairman, let me get to the business at hand this morning, Senate bill 143. First, this bill is identical to the bill vetoed by President Reagan last November. I have attached a copy of his veto message to my statement. The objections raised in that veto message last year we believe are still relevant today.

Specifically, Senate bill 143 would create an additional new organization to administer functions that, to a large degree, already exist within the Bureau of Indian Affairs, and we believe that the organization places the Federal Government at substantial financial risk.

Given our strong objections to Senate bill 143, we are, however, prepared to work with the committee to strengthen the existing

credit programs and address other barriers affecting Indian reservation economy.

Now, in regard to the Implementation of the Indian Credit Amendments of 1988, let me state that since I came aboard I have signed the final regulations incorporating the 1984 amendments to the Indian Financing Act, and they will be published in the Federal Register next week.

Now, in regards to the other component, the taxable bond and implementation surety bond guarantees that are mentioned in the 1988 amendments, this is a new credit authority and, in order for us to carry that out, we must first receive the appropriation and we must publish regulations. Those regulations are estimated to be completed by June 30, 1990.

For the section that involves the increase in loan guarantee limitation on individual Indians from $350,000 to $500,000, this has been included in our final regulations approved by my office last Friday.

In the section that would allow for the sale of loan guarantees to any person, this has been incorporated in our proposed draft regulations to be completed by June 30 of 1990.

In regards to the increase of our loan guarantee ceiling from $200 million to $500 million, this does not require a regulatory change. This allows the Bureau to have an outstanding balance in our loan guarantee program of up to $500 million; however, we still have to receive an annual loan guarantee ceiling through the budget process.

The other section, which requires the Bureau to notify Congress of any deficiencies in reserve for losses on loans or surety bond guarantees, at this time there are not any deficiencies in our reserve for losses on guaranteed loans, and we are requesting reserve funds through the regular budget process.

The section that authorizes that a contractor to a Federal agency under any act of Congress may be allowed an additional 5 percent of the amount paid in carrying out the contract if such subcontractor or supplier is an Indian organization or an Indian-owned economic enterprise, in regards to this section OMB is presently reviewing this provision to determine the proper procedure for implementation since this will involve appropriations.

Now, Mr. Chairman, this completes my opening remarks.

In order for me to be able to fully answer any questions that might be given to me this morning, I would like to ask Mr. Richard Nephew, head of our Credit and Finance, to join me at the table at this time.

[Prepared statement of Mr. Brown appears in appendix.]

Senator McCain. That would be fine, Mr. Secretary.

Doctor Brown, if the Development Finance Corporation goes forward do you think the Indian Financing Act should be folded into the corporation?

Mr. Brown. I think that is something that needs to be looked at very closely, Mr. Chairman. At this point in time I think there are many questions in regards to whether or not there would be a duplication involved. I think the key thing is to look at how the Indian community, Indian tribal government, and entrepreneurs

could best be served. I think after review of that we would be prepared to come back and take a look at that.

Senator McCAIN. Do you think the corporation should be open to all tribes, regardless of whether they have purchased shares?

Mr. BROWN. Excuse me, Mr. Chairman?

Senator McCAIN. Do you think that the corporation should be open to all tribes, regardless of whether or not they purchased shares in the corporation?

Mr. BROWN. I am not prepared, Mr. Chairman, to respond to that, but would be willing to put that in writing in regards to a response.

Senator McCAIN. I'd like for the committee counsel, Mr. Parker, to ask a couple of questions in a moment, if you don't mind.

My distinct impression from your statement, both oral and written, is that we have a strong difference of opinion here. Do you agree?

Mr. BROWN. At the current time, yes, sir.

Senator McCAIN. Do you see any prospect that we can work out some of these differences?

Mr. BROWN. I think at this time we are prepared to work. And as we go out and talk with the tribes—I think this is critical, in our mind. I need, given that I have been here a short time and I have developed, over the next 90 days, a plan to discuss with tribes. I think that is an important component. I must begin to sit down and talk with those individuals—not only those tribal governments, but those individuals that have been successful—and, from that, would be prepared to come back in to take a look at the direction that we need to go.

Senator McCAIN. I hope so. Let me say that my feeling and the feelings around the Senate and, from what I understand, around the House is that there is a good chance that we could override the President's veto. I don't think that the President would enjoy that, and I would suggest that we do everything we can to try to get some kind of a compromise worked out.

I know that Senator Inouye, staff, and other members of the committee are willing to try and reach some—make some compromises so we can agree. But I also believe it is the sentiment of this committee that we'd like to move forward this year on this bill.

Let me just ask you about the Indian Economic Development Act. Have you had a chance to review the Indian Economic Development Act?

Mr. BROWN. I have just briefly reviewed it, sir.

Senator McCAIN. Do you agree with the principle that we need to provide some taxation and other incentives for businesses to stimulate business on Indian reservations?

Mr. BROWN. Yes; at this time very much so. The questions is, looking at—at this point in time let me just say I think it is important that we identify a variety and options of incentives. The opportunity is there. The question is: what are the specific options? I would want to check a little more thoroughly.

Senator McCAIN. Well, we have been working on this kind of legislation now for six years and sorted through a lot of the options, and we have come up with what we think is the best. I would certainly appreciate your input, but I also must say, in all candor, it is

not your fault or the Administration's fault that we have great problem with the tax-writing committees, but we are getting a bit impatient. As I read in Senator Inouye's opening statement, average unemployment is 52 percent. It seems to me that we ought to give a lot more attention to the issue of economic development. I believe this is at least a method that we ought to try—particularly since similar programs have been tried in inner cities across America with great success.

So I hope you will give that some priority, because I also would like to try and get some movement on that legislation this year. If necessary, I may bring it up as an amendment on the floor of the Senate and let my colleagues vote against economic incentives for Native Americans.

I have a question from Senator Cochran. Has an independent auditor ever appraised the risk factor or loan value of the portfolio?

Mr. BROWN. At this point in time let me refer to Mr. Nephew.

Mr. NEPHEW. No; they haven't.

Senator MCCAIN. Dr. Brown, when do you plan on organizing a meeting of successful tribal business leaders to assist you in formulating amendments to the policy?

Mr. BROWN. That will be done. We have set out a 90-day plan which I have sat down with the Secretary and discussed. In the next 90 days we will begin those discussions to, as I indicated, develop some direction and a strong economic development initiative. I agree with you, Mr. Chairman, in that we have waited a long time, we need some specific direction in regards to what is the role and function of the Bureau and what we are prepared to support. Within the next four to six months I would hope that we would have very clear that direction and have organized a network of strong tribal support and input in regards to the initiatives that we will be pursuing.

Senator MCCAIN. I would like to call on the staff director, Mr. Parker.

Mr. PARKER. Thank you, Mr. Chairman.

Secretary Brown, the statement that you presented to the committee suggests that when you go out to seek input from tribal leaders you will give a lot of weight to their position relative to, among other things, the bill S. 143 and the basic ideas presented in that. Should we understand that if there is a strong majority sentiment in favor of that legislation that that would have a very significant impact on the Administration's future position?

Mr. BROWN. Mr. Parker, let me say that as we go out and get the comments in, if, in fact, that does occur, or any other comments that occur that are very strong and appear to be the direction in which tribes are clear in regards to their input, then I am prepared to take any of that back and further discuss it within the Administration on the direction that we need to go.

So I am open. I am going out there to discuss with the tribes. And if there is a majority push in a specific direction, I am prepared to come back and open that up for discussion because I think that is going to be key. Unless we are able to respond to what the tribal needs are, then we are still missing the mark on how we are going to address or remedy the problems that exist.

Mr. PARKER. Thank you very much. I have a follow-up question on your efforts to reach out for counsel and advice from tribal leaders—particularly those tribal leaders who have a very successful track record in developing the economies on their reservations. Do you have any specific plans to seek that input on a more organized basis? For example, appointing or asking people to serve an on advisory committee of some sort.

Mr. BROWN. One of the concepts that I had talked about in my confirmation statement as we went out and developed the discussions earlier on was the concept that we wanted to identify work groups or groups of individuals across a number of initiatives: education, economic development, social services, human services, and those kinds of things. Yes, we are prepared to try to take the concept that I have effectively used in the State of Arizona and apply that at a more national level to ensure that we can get and have at hand those individuals—not every tribe and not every individual is interested in every subject. The question is to have a ready work group available to tap for resources as we address key issues on almost a day-to-day basis within the Assistant Secretary's office.

Mr. PARKER. Mr. Chairman, I have a couple of questions on the Indian Financing Act issue, with your permission.

According to the testimony that you have provided in response to the committee's questions, there is approximately $185 million of loans that BIA has guaranteed under the loan guarantee program. Does your experience show that that volume of loans represents the demand? Or do you feel that there is a demand that exceeds the amount of authority that you have to guarantee loans from year to year?

Mr. BROWN. Let me refer to Mr. Nephew.

Mr. NEPHEW. The figure $184.9 million is the outstanding balance as of March 31. If we look at the figures on the previous page, the total loans that we have guaranteed under the program amount to over $285 million.

In answer to the question of whether or not there are demands that are not being met, we have found that over the past couple of years where we have received $45 million ceilings we have not approved guaranteed loans up to that amount.

Mr. PARKER. With the chairman's permission there are a couple of other follow-up questions just for the record.

The testimony that you presented explains your interpretation of the Indian Financing Act amendments from last year, 1988. In order to guarantee taxable bonds or bond issues or similar types of credit instruments, you conclude that the BIA would need new authority from the Appropriation Committees to be able to back up those bond guarantees. You anticipate that you wouldn't be in a position to request that authority until fiscal year 1991. Regarding possible action by the Appropriation Committees on this fiscal year 1990 bill—what type of authority would you need if the Appropriation Committees might be willing to consider addressing that question in its fiscal year 1990 deliberations?

Mr. BROWN. Let me answer part of that and then let me refer to Mr. Nephew. We indicated that there were two things required, one was the appropriations and the other was the regulation, and we were projecting the regulations to be finished on June 30, 1990.

Those would go hand in hand in regards to—the timing would be correct or would come together at a proper time with the 1991 budget and the completion of those regulations.

Now, in regards to any immediate action on the 1990 budget let me refer to Mr. Nephew.

Mr. NEPHEW. As for what we would need in appropriations, we already have increased ceiling up to $500 million. And, of course the bond guarantee, the surety bond guarantees would all come under the ceiling, so we wouldn't have any—we'd have the authority to do it. What we would need in appropriations would be funds to establish a reserve—a reserve for the bond guarantee and also a reserve for the surety bonds.

If appropriation comes into the 1990 budget, we have already discussed our regulations and have tentatively made an agreement with OMB that they would try to arrange a meeting between the department, OMB, and the Bureau to review these at one time, thus saving some time in implementing the regulations. So if there are appropriations, we may have regulations ready by December.

Mr. PARKER. But if the Appropriations Committee authorizes you to use the funds that you already have on hand as a loss reserve for guaranteed loans, to use those same funds as a loss reserve for bond guarantees, if I understand you, then that would be sufficient in order to be able to proceed with a program of guaranteeing taxable bonds.

Mr. NEPHEW. Yes; that probably would be. We'd have to take a look at it. Our reserves under the loan guarantee program are about $12 million at this time. So we would have to look at what is going to happen the rest of this year and what we see happening next year as far as defaults under our loan guarantee program. Then we'd have to determine whether or not we would have sufficient reserves.

Mr. PARKER. Then this would go back to Senator Cochran's question about whether you have ever done an independent audit or appraisal of your loan guarantee portfolio to assess the risk and determine whether the funds that you have on hand as a loss reserve are sufficient based on an analysis of the actual risk.

Mr. NEPHEW. We have not gone out and obtained an independent analysis. We have done an internal analysis of our loans just this past December. At that time the areas were instructed to contact the lenders and to go over the loan guarantee portfolio that they had. We have found that there was probably about $2 million in loans that were considered as possible losses at that time. The rest of them we found to be in pretty good shape.

Mr. PARKER. So if you have a minimal risk level on those loans, then you could conceivably use some of that $12 million to back up a bond guarantee program?

Mr. NEPHEW. Yes; we could.

Mr. PARKER. Thank you.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. First of all my apologies for being late, but we took the wrong route coming in and there was a huge tree in our path that held up traffic for about an hour.

I have been looking forward to this hearing because this is your first official visit with us as a witness, and I welcome you, sir.

Mr. BROWN. Thank you.

The CHAIRMAN. Without objection, my opening statement has been made a part of the record in the appropriate place.

I have studied your statement, and in your statement there is repeated the same thing that President Reagan had in his veto message, that this bill is essentially duplicating existing programs, entities, and services. If that is the case, I have to wonder what has this agency and BIA been doing up until now.

Second, I concur with your statement that if one is to consider economic development in this area or any other area, one must seriously study the infrastructure of that society—not just the physical infrastructure such as roads and buildings and sewer systems, etc., but the people, themselves—their health, their intellectual capacity, etc. The question, again, arises: we have had the Bureau of Indian Affairs for many years, we have had the Interior Department for many years, the United States Government has been in existence for many years, and where have you been up until now? This is just frustration speaking.

I just hope that in your Administration you will do something that your brothers and sisters in Indian country will consider as being courageous: be an advocate. I have been here for over 2½ years and have sadly listened to administration officials, many coming from Indian country, responding in strange ways when I say, "What would you do if we gave you more money?" "Well, we don't want any more money because OMB told us not to ask for any more money."

I don't have to repeat the statistics. They are horrible. And that's an understatement. Just the unemployment picture, if you discuss that with non-Indian communities they are convinced you made an error in the decimal point. They say it can't be 57 percent, it must be 5.7 percent. Because it is mind-boggling to think that over half of the work force of any community is unemployed—or, for that matter, 95 percent in some areas.

What we have been trying to do admittedly may be crazy, but we came into this business in a vacuum. Nobody has been doing anything. It was status quo spending money in the same way and wasting it in the same way. I am certain that we can work together. I like your statement that we should work together and come up with something. We have been prepared for this for two and a half years waiting to work together to come up with a solution.

I can assure you I am a patient person and the vice-chairman and I would want to carry on a friendly, amicable, and rational relationship with the Administration because my concern is that folks in Indian country may not wait much longer. It amazes me that they have waited this long. It amazes me that there is this minimum of violence in Indian country. In other communities, in

non-Indian communities you would have had violence a long time ago. There must be something in the character of Indians that makes them peaceful. And yet, in Hollywood, Indians are the violent people. But the facts suggest that of all the peoples in the United States, Indians are the most peaceful. All you have to do is look at the last 50 years and marvel over their patience. I think very few non-Indians would take that.

So all I can say is that your objectives have been heard. I will instruct my staff to roll up their sleeves and get down to business with you and see what we can come up with. I don't want to go through an exercise—a very serious exercise—in both Houses and have the President of the United States cavalierly just veto this and come up and say, "But we've got this agency already," when he and everyone else knows that we don't have it.

So I would have hoped—and I am certain you would have hoped—that on your first visit with us you would have discussed a measure to which you could have given your support, but you have to do your job and I understand that, sir.

We stand ready to work with you.

Mr. BROWN. Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator McCain?

Senator MCCAIN. Thank you, Mr. Chairman. I think you stated the situation with your usual eloquence, and I'm sure that Doctor Brown understands where not only this committee is, but also where the House is on this issue, as well.

Thank you, Mr. Chairman.

Thank you, Mr. Brown.

Mr. BROWN. Thank you.

The CHAIRMAN. Thank you, Mr. Secretary.

Now, may I call upon the following: the Chairman of the Navajo Tribal Council of Window Rock, the Honorable Leonard Haskie, who will be accompanied by Mr. Bruce Kaiser of the Tax Commission of the Navajo Tribal Council; the president of the National Center for American Indian Enterprise Development of El Monte, California, Mr. Steve Stallings; the Senior Policy advisor of the Council on Energy Resource Tribes of Denver, Colorado, Mr. David C. Harrison; the Chairman of the Board of Directors of Laguna Industries of Laguna, New Mexico, Mr. Raymond Goetting, who will be accompanied by Mr. Daniel Press, General Counsel to the Native American Industrial Trade Association; and the manager of Pricing, Profitability and Scenario Development of U.S. West Communications of Denver, Mr. David Brunt.

Chairman Haskie, on behalf of the committee I welcome you, sir. Our heart cries out to you for the problems you are having in Indian country. We hope the time will come when you and your fellow Navajos will be able to resolve these problems. Please send our condolences to the families of those who died a few days ago.

STATEMENT OF HON. LEONARD HASKIE, CHAIRMAN, NAVAJO TRIBAL COUNCIL, WINDOW ROCK, AZ, ACCOMPANIED BY BRUCE KAISER, TAX COMMISSION, NAVAJO TRIBAL COUNCIL, WINDOW ROCK, AZ

Mr. HASKIE. Thank you, Senator and committee members. I am extremely pleased to be afforded this opportunity to present a written testimony. I know you have all been very understanding and compassionate in our recent event.

I want to proceed with the reading of my written testimony.

Mr. Chairman and Honorable committee members, I am Leonard Haskie, the interim chairman of the Navajo Tribal Council of the Navajo Nation. I am accompanied today by Mr. Bruce Kaiser to my right, director of the Navajo Tax Commission.

On behalf of the Navajo Nation I would like to thank you for the opportunity to appear before you to discuss one of the most important issues affecting Native Americans—the development of Indian reservation economies.

Let me provide you with some facts that are important to your understanding of the need for this legislation.

The Navajo nation covers 25,000 square miles, an area about the size of West Virginia, spanning the States of Arizona, New Mexico, and Utah. It is estimated that over 160,000 Navajos currently reside within the boundaries of the reservation; however, our overall growth rate is approximately 3 percent—which is three times greater than the rest of the United States. According to the 1980 census, our per capita income is approximately $2,400 per year—about 33 percent of that of the surrounding states. While current unemployment in the United States has been reported to be 5.3 percent, Navajo unemployment is approximately 32 percent.

Many areas within the Bureau of Indian Affairs nation have little or no infrastructure. Most of our people cannot get to their homes without traveling over dirt roads. About 60 percent of Navajo families must live in deplorable conditions, without running water, electricity, or indoor sanitary facilities.

A host of social problems have resulted from the conditions within the Navajo Nation. Substance abuse, primarily alcoholism, is a critical problem. It is estimated that over 35 percent of our people have an alcohol problem. In many ways, we compare to poverty-stricken Third World nations.

In stark contrast to the poverty on the Navajo Reservation, we have a wide array of assets—such as a large work force, natural resources, and an ideal location—which, with proper management and incentives for development, can pull us out of our poverty cycle.

To date, we have been provided welfare assistance by the Federal Government, but we have not been assisted in developing the proper tools to implement an economic development program that would increase income to the tribe and provide job opportunities to the Navajo workers.

We applaud the committee and your efforts to provide these tools through the enactment of the Indian Financing Act Amendments of 1988 and through the consideration of Senate bill 1203 and Senate bill 143.

For some time we have been implementing a business development program. We have met with many companies, and while we have had some success, several companies have chosen not to locate on reservation lands. Some major concerns expressed by these companies were double taxation—that is state and tribal taxation—and the lack of infrastructure.

The business community is reluctant to locate their activities on the Navajo Nation where they will, in all likelihood, be required to pay both State and tribal tax. The presence of double taxation significantly limits the ability of the tribe to increase tribal tax revenues.

While the tribe is in need of the revenues that may be raised form businesses on the reservation, it is considering the possibility of working out a tax sharing agreement with the states. The tribe has participated with New Mexico in a joint task force consisting of members from the tribe, the New Mexico legislature, and industry to try to find a solution to the double taxation problem.

We believe, however, that part of the long-term answer is to provide Federal tax incentives for businesses to locate on Indian lands. Federal tax incentives can help us mitigate the adverse affect that State taxation on Indian lands is having on reservation economies. Moreover, by making the reservation a more competitive, attractive business location, needed revenues will be generated which will enable us to provide badly needed infrastructure and to promote business development.

S. 1203, the Indian Development Act, helps to achieve these goals by providing investment incentives to encourage increased investment by existing businesses and also to facilitate new business development. The allowance of non-recognition of gain on the sale of Indian reservation property encourages businesses to reinvest in property within the Navajo Nation. The targeted jobs credit will permit businesses to reduce their Federal tax obligations, as well as to help reduce the level of unemployment on the reservation. Furthermore, Senate bill 1203 adapts the possessions tax credit," which will permit U.S. firms to claim a credit against their Federal income tax liabilities with respect to the income produced on the reservation.

This tax credit has spurred great economic development in U.S. possessions such as Puerto Rico and the Virgin Islands. For example, Puerto Rico, where American companies have enjoyed this tax credit since 1921, was transformed from the poorhouse of the Caribbean into one of its richest industrial centers. The tax credit lured hundreds of U.S. industries, where their investment created thousands of jobs. Its gross national product grew at nearly double the U.S. rate between 1950 and 1970. Tribal economies can and need to have the same experience.

Self-determination for tribal governments cannot be separated from economic development. Tribal governments cannot raise the necessary revenues to provide essential governmental services unless economic incentives are provided for business to locate on Indian lands. We, therefore, strongly support the passage of Senate bill 1203.

For the same reasons, we support the concepts contained in S. 143—the Indian Development Finance Corporation Act. This pro-

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posed legislation would create a joint Federal-tribal, semi-autonomous development institution to support the formation of individual Indian-owned enterprises.

Many Navajos who desire to establish a business on the reservation encounter several obstacles, including the lack of individual capital and the inability of Navajo businessmen to provide collateral. Consequently, private financing becomes difficult, if not impossible. In addition, like all businessmen, many Native Americans require technical assistance for proper business management. Yet, most Navajo businessmen cannot finance the technical assistance that their businesses require.

The Indian Development Finance Corporation Act will help remedy these problems by furnishing capital, business assistance, direct loans, and loan guarantees. The proposed legislation provides an innovative approach that would permit tribal participation in the decisionmaking process—a key to ensuring successful Indian economic development.

I would like, however, for the committee to consider certain modifications to the bill as proposed. Section 103 states that the corporation has the power "to establish one or more regional offices in order to more efficiently serve the widely disbursed Indian population." The Navajo Nation believes that the proposed statute must include a regional entity in the southwest, as approximately 50 percent of all Indians in the United States live in the Southwest. Such decentralization also serves potential clients better.

Section 203 sets for the authority of the development corporation to issue loans. In reviewing the loan applications, the Navajo Nation believes that all proposals should be acted on within a reasonable time. Businesses and entrepreneurs cannot afford to stall their growth and development plans while their proposal for financing is being scrutinized. The statute should impose such a requirement to guard against lengthy review procedures. This is an important piece of legislation that would serve as a strong companion to S. 1203.

We commend you, Mr. Chairman, and the committee for its actions which ultimately led to the passage of the Indian Financing Act Amendments. We view the ability to obtain a BIA guarantee of loans and bond issuances, and the ability to create a secondary market for them, as a great opportunity. We view this opportunity as an avenue for the financing of Indian enterprises that has long been needed.

Unfortunately, there has been a delay in implementing the amendments. We are very anxious to use this valuable tool. As a matter of fact, Navajo Agricultural Products Industry, NAPI, has requested assistance from the BIA pursuant to the authority provided to the BIA under the Indian Financing Act, as amended.

NAPI presently has an $18 million loan outstanding, which it needs to restructure. NAPI would greatly benefit from the opportunity provided by the Indian Financing Act if it could place a BIA guaranteed long-term bond issuance in the market.

In December 1988, a formal request was made of the BIA to guarantee the authorized amount of a $25 million long-term bond issuance with a view to issuing the bonds in March 1989. The request was denied because the BIA had not yet promulgated regula-

tions to implement the statute, nor had it received appropriations that would support it. The tribe has recently made another informal inquiry, and the BIA responded that it hopes to promulgate final rules by December 1989.

While the tribe appreciates the efforts of the Congress and the BIA to provide this opportunity, NAPI is in great need of assistance now. Similarly, a number of other tribal enterprises need financing for expansion and development. We look forward to the issuance of proposed rules shortly and promulgation of final regulations by the end of the year, if not sooner.

I appreciate the opportunity to comment on these specific legislative proposals, and in addition would like to offer suggestions that may complement any Indian economic development bill. Many investors are hesitant to make investments on Indian lands because of the political and commercial uncertainties presented.

I believe that the creation of a risk-insurance program would mitigate these uncertainties. Such a program could be modeled after insurance programs offered by the Overseas Private Investment Corporation, OPIC, a Federally-chartered institution created to reduce the uncertainty associated with investment in developing Third World nations, or the Foreign Credit Insurance Association, FCIA, sponsored by an association of private insurance companies in conjunction with the Export-Import Bank. Some form of insurance would greatly enhance the attractiveness of investment on Indian lands.

In conclusion, Mr. Chairman, I am delighted that the committee is exploring various alternatives to encourage economic development on Indian lands. Increased public and private sector support for development is necessary in order to create job opportunities, alleviate harsh social conditions, and assist the Navajo Nation in gaining greater economic self-sufficiency.

I trust that you have provided many hours of hard work into this piece of legislation and know it certainly will propel Indian nations to look towards new environment in the area of economic development.

I appreciate this opportunity. Thank you, Mr. Chairman and committee members for inviting me to participate in this hearing.

[Prepared statement of Mr. Haskie appears in appendix.]

The Chairman. I thank you.

Mr. HASKIE. I have Mr. Bruce Kaiser, to my right, who will be ready to respond to any technical oriented questions.

The Chairman. Thank you very much, Mr. Chairman. It is good to have you with us in your official capacity.

I was very intrigued by your closing remarks suggesting the establishment of risk insurance programs. And your observation that there is much political and commercial uncertainty and instability in certain reservations is well taken. I think that is a very realistic approach.

I will advise my staff to look into programs that we find in the Export/Import Bank and OPEC and see what we can cull out of those programs and make it applicable to Indian Country.

I would like to call upon the man who has been in the forefront on matters such as this. He is the author of S. 1203, the proposal

that you think very highly of and I think highly of. I am pleased to call upon the vice chairman, Senator McCain.

Senator MCCAIN. Thank you very much, Mr. Chairman, and thank you for all of your assistance in this and all the other efforts you have made on behalf of Indian economic development.

Chairman Haskie, welcome. I share sympathies expressed by the chairman concerning the recent tragedies that have taken place. I would also like to say that there are many of us who have been greatly impressed by your leadership, your dedication, and your efforts on behalf of the Navajo people. We hope that there will never be a reoccurrence of the tragic instance which just took place.

I'd also like to point out to you, Mr. Chairman, as you probably are aware, S. 1203 has to go before the Finance Committee because it amends the tax code. Chairman Inouye and I will take your views to the Finance Committee. We will seek another hearing. We had one last year. I believe that around this place a time comes for everything, and it is getting nearly time for us to address the economic conditions on Indian reservations—in fact, I would say that it is long, long, long overdue. I believe that there is a significant increase in support for legislation such as S. 143 an S. 1203, which we have not seen in the past. And the participation of you and the other witnesses is very important—Mr. Goetting and Mr. Stallings and others who have been involved in these issues longer than we have.

Very briefly, Mr. Chairman, could you describe the progress or status of your discussion with the State of New Mexico on the tax-sharing scheme?

Mr. HASKIE. I will call on Mr. Kaiser to address that, with your permission.

Senator MCCAIN. Please go right ahead, Mr. Kaiser.

Mr. KAISER. Mr. Chairman and Mr. McCain, we held talks with the State of New Mexico for about four or five months in Santa Fe on the possibilities of entering into tax-sharing type arrangements. But I think that those talks really didn't come to fruition because the states, especially after the Cotton Case, are reluctant to enter into tax-sharing type arrangements. We also plan, along with the Hopi Tribe, to get in contact with the Arizona Department of Revenue within the next 30 days to enter into those types of discussions, also. I believe that there was a bill introduced about three years ago in the Arizona legislature that addressed that issue.

Senator MCCAIN. In the last Congress the Finance Committee placed restrictions on a tribe's ability to issue tax-exempt bonds. What effect has that had on the Navajo Nation?

Mr. KAISER. I think that it certainly does—the inability to issue tax-exempt bonds definitely hinders the ability to issue bonds, in general, and finance economic development projects.

Senator MCCAIN. Steve, would you or Mr. Goetting like to comment on that question—the issue of tax-exempt bonds?

Mr. STALLINGS. It has drastically affected it, because there is a significant increase in tax-exempt bonds, and they have come to a halt now. Even the professionals in the industry are of this opinion. Although, I'd like to interject the idea that many of these experts have considered the ability to guarantee a tribal bond issue as much like a tax exemption from the standpoint that it enhances

the marketability of an issue because of the Federal guarantee. And, in fact, will probably result in a lower interest rate because of that guarantee.

Mr. GOETTING. One of the problems actually is the fact that there is a history or lack of a history of successful operations in order to pay off so that the guarantee or the support of the government would almost likely be a subsidy. So the concern really is in general about the operation on the repayment.

Senator MCCAIN. Thank you.

Thank you very much, Mr. Chairman.

The CHAIRMAN. I thank you very much, Chief, and I look forward to seeing you again, sir.

Mr. HASKIE. Thank you, Mr. Chairman.

The CHAIRMAN. May I now call upon President Steve Stallings.

STATEMENT OF STEVE STALLINGS, PRESIDENT, NATIONAL CENTER FOR AMERICAN INDIAN ENTERPRISE DEVELOPMENT, EL MONTE, CA

Mr. STALLINGS. Thank you, Chairman Inouye and Senator McCain. It is a great opportunity again to appear before this committee.

I wish to again congratulate the committee on its fine work in a continuing commitment to enhance the economic well being of our nation's first Americans. This is evidenced by the excellent piece of legislation before us and in the history and record of this committee. You are creating a lasting impact for future economic self-sufficiency.

I would make one request, I'm not going to read all of my testimony, that it be entered in the record.

The CHAIRMAN. It will be included in the record.

Mr. STALLINGS. I'd also like to be given the opportunity to further study the Administration's viewpoints and submit additional testimony in writing to the committee.

The CHAIRMAN. The record will be kept open, sir.

Mr. STALLINGS. We urge favorable Congressional consideration of S. 143, the Indian Development Finance Corporation, for a number of reasons. Our experience with the businesses we serve proves that they experience substantial difficulty in obtaining capital. Many of these businesses have insufficient equity and collateral to qualify for conventional bank lending.

We recently surveyed 121 of our reservation clients and found that over 60 percent of these firms who had attempted to borrow money could not obtain a loan at all or could not obtain a loan on reasonable terms—and that included BIA conventional guaranteed loans and direct loans.

After careful review of the alternative financial institutions, we fully support that Development Finance Corporation concept. It is a unique type of financial institution because it has the highest leverage, lowest risk, and utilizes consulting and client servicing. It is the easiest to start. Furthermore, the Development Finance Corporation, unlike a bank which makes primarily short-term loans, would specialize in long-term capital, which is more appropriate to the needs of growing tribal and Indian companies.

The Development Finance Corporation should seek private, government, foundation, and corporate support in order to capitalize. While the Development Finance Corporation will use bankers' criteria to evaluate repayment ability, Indians want controlling interest to assure that the Development Finance Corporation makes the extra effort required to make financing available which conventional institutions and the Bureau of Indian Affairs decline or are unable to approve as too risky.

Earnings to the Development Finance Corporation must be reinvested in other loans and investments. The Development Finance Corporation serves as the vehicle to attract private capital for Indian economic development, building on the capabilities of Indian and tribal entrepreneurs to expand their businesses and create new ones, providing new employment and new ownership opportunities.

The corporation, by attracting public capital, as well as private capital, will serve as a catalyst for promoting public/private partnerships leading to economic self-sufficiency. The corporation is a new and important initiative in business and economic development. It will provide Indian control for a source of capital geared to the needs of growing tribal and Indian-owned businesses, provide financing to enterprises on reservations which, in effect, are enterprise zones. The fund will act as a catalyst in establishing successful Indian businesses throughout the U.S.

In listening to the Administration's testimony, I would like to point out a couple of issues. The administration has concern over duplication of effort in S. 143. Clearly, in our regional sample, 121 businesses couldn't find capital and the current capital mix of the Bureau's credit programs did not meet their needs. What is required is a new financial vehicle to finance those needs.

There is no duplication of effort for the big, long-term projects that require the most flexible financing terms like that illustrated by the Navajo Tribe. It cannot be done by the Bureau's current credit programs.

We think that the Development Finance Corporation puts decision-making over credit and business development into the hands of experts—something that the Bureau of Indian Affairs, given its structure and organization, cannot do. It lowers the cost of equal-sized projects based on their size because it puts them into the private market where this will take place.

The justification that it doesn't deal with the underlying problems of economic development is a fallacy. This institution is not to solve social and political problems. It is to deal with the business and economic issues and operates in that environment. Solving those underlying problems should be left to the Bureau of Indian Affairs and should be separated out from achieving a professional business development approach.

The argument that other Federal money has been spent in the past and we shouldn't do it again. This new institution is trying to take a relatively small amount of Federal capital injection and create financial leverage in the private financial markets that will not take additional Federal funds.

The Assistant Secretary stated that he was very willing to meet with the staff and the committee and work out these issues. I think

that those are the kind of things that should be discussed and conclusions made that we are talking about something new, something creative, something that will finally solve the capital gap problem that exists for Indians.

As to S. 1203, the Indian Economic Development Act of 1989, we again urge the Senate's favorable consideration here because the troublesome requirements that tribes remove their sovereign immunity from the old Enterprise Zone bill has been removed. The proposed incentives for investment and business operations will provide a great deal of interest and commitment and involvement by private industry.

While we are all heralding this bill as the Marshal Plan for Indian tribes, we must remember that the plan to rebuild Europe after World War II required extensive investments of funds and manpower by the United States.

In an effort to assess industrial development tax incentives, we recently conducted interviews with corporate executives responsible for personnel and human resources, material, logistics, telecommunications, facilities, and industrial engineering. The collected information was evaluated for both the general requirements of large business, as well as the specific attributes desired by each company.

This information was presented recently in our joint venture study to give readers a synopsis of corporate thinking as it relates to long-term corporate involvement and investment. Most corporate managers considered the availability of highly-trained personnel at the new location as the most important factor and claimed that skilled manufacturing workers, especially engineers, were difficult to move.

However, cost-oriented reductions in tax and operating expenses advantages were the second-most important factor to these companies. Existence of right-to-work law regained important considerations. Companies viewed those costs as important consideration and saw potential savings in the benefits by exploring arrangements with tribes as tribes sometimes have access to tax breaks and Federal health programs and financing programs.

Political advantage was graded as the third-most important factor when choosing and industrial location, gaining additional support in Washington is extremely important to many companies. Specifically mentioned was Congressional support which inspired companies to relocate to these areas. This was supported substantially by these companies.

I'd also like to refer the committee to a pending report by the Native American Rights Fund entitled, "Doing Business: Evaluation of Policy Alternatives to Encourage Private Enterprise in Indian Reservations," which the National Center is helping to finance.

Two specific tandem measures will ensure an effective Indian program and efficient use of the provisions, these are cited in this report and in our testimony. First, a source of developmental capital. U.S. efforts after World War II centered around long-term development capital to finance the rebuilding of Europe. To rebuild Indian economies will require just such a source of long-term capital. Current public and private sources of capital do not meet

these needs. Either S. 1203 must have a provision for this new source of capital or S. 143 must be looked at as a tandem piece of legislation to make meaningful impacts to attract industry to the reservation. Indians will require their own source for participating investment in these deals to make the developments on the reservations feasible.

Secondly, a source for managerial, marketing, and technical assistance is needed. U.S. efforts did not end with the injection of capital in Europe. It included various civilian and government authorities, which brought the best of human and technical resources to bear on the problem of rebuilding Europe.

The NARF report in our previous testimony recommends a technical assistance effort called Business Partnership Centers to promote Indian reservation industrial development to assist in startup of ventures which could utilize the incentives in S. 1203. There are other technical assistance efforts, for instance, any new program is going to need promotion and it is going to need someone that can bring the parties together and help them negotiate meaningful business deals.

The Indian Finance Act Amendments of 1988—the Senate performed an excellent public service with S. 1360 in the 100th Congress by improving a very worthwhile law and public financing program. However, this committee must take a concerted effort at reviewing the administration's management of this program and its conformance with the law and the intent of Congress. There is a need to redefine the current program, invigorate the environment in which it operates, and create a new "development philosophy" at the BIA.

There is a fallacy in the BIA's view of itself as the lender of last resort. To have all other conventional capital markets turn down a deal and then pretend that you can make conventional credit decisions and operate conventional financing programs does not make sense. The BIA must be directed to act in a developmental mode viewing its sources of statutory capital as the money to make a deal work. Adopting this developmental approach will allow the BIA to act as the initiator, supporter, and helper of beginning Indian operators rather than their loan officer and critical analyzer.

We believe that the Bureau should be requested to provide a justification of how it arrived at the point that it requires additional authority for bond issues. Does it have a Solicitor General opinion on that? I think that request should be made of the BIA of how they arrived at their decision.

Linking the issue of bonds to an increase in the ceiling in the reserve fund, again, if the capital mix of the credit programs does not meet the need of tribes and individual Indian borrowers, then the BIA will never use its $45 million authority. If the BIA had the ability to do flexible financing like bond issues, the $45 million authority would be eaten up very quickly because there are that many deals out there.

The use of the ceiling justification is linked to program marketing and bond issues, and there is no marketing in the Bureau's credit programs especially their guaranteed program with banks. Individual credit officers will tell you that they do not have the

time, the resources, and the ability to go out and market the guaranteed loan programs through participating private banks.

We believe that the Bureau should be requested to provide this committee with an analysis of its loan portfolio to provide you with information that allows you to make proper decisions about whether or not the program is successful and whether or not the program needs these additional vehicles in the market place to help make the program more effective.

Mr. Chairman and members of the committee, at no time has there been or will there be a better opportunity to finally make an impact on economic lives of American Indians. No one of these legislative actions will have the impact of combining the measures and others like the Buy Indian Act into one comprehensive legislative package designed to develop viable reservation economies.

Viewing the important work of Congress in this area as a legislative package demonstrates a true understanding of the complexities of Indian community development and the non-partisanship of Indian affairs. We strongly recommend the members of this committee pursue a strong course of action for adoption by Congress and immediate implementation by the Administration. You have our full support and cooperation.

Thank you.

[Prepared statement of Mr. Stallings appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Stallings.

As you know, S. 1203 is before the Finance Committee, and S. 143 is before us. And the Administration has voiced its opposition. The first attempt we made was met with a veto, and I have no idea what the fate of this measure will be if we are successful in getting it out.

But while we are doing whatever we can to get both of these measures successfully resolved, could you and your associate prepare a memo by studying the present programs—and this is in response to Doctor Brown—the programs that are in existence at the present time, and see how we can legislatively improve them?

Mr. STALLINGS. Yes, sir.

The CHAIRMAN. If that is the route that the Administration prefers that we follow, I would like to be prepared for that. How can we improve upon the present program infrastructure, the present agencies that are handling economic development for Indian country. That would be a very helpful document for the staff.

Mr. STALLINGS. We'd be more than glad to do that.

Senator McCain has asked a very relevant question about whether or not these programs might be better run through something like the Development Finance Corporation in terms of maximizing the professional ability to manage things and leverage of the capital base. I would like to interject that we will also provide an analysis in memorandum form of what some of the alternatives are for delivery of the Bureau's current credit program.

The CHAIRMAN. I don't want any person to get the impression that I have somehow minimized my support for S. 143. I am in full support of that, and I intend to, with all vigor, press for its passage by both Houses. This is a monumental job, and I think much credit should go to Alan Parker who is sitting here next to me. In fact, it is known throughout the Hill as the "Alan Parker Bill."

Mr. STALLINGS. I think that the Assistant Secretary will find, in his consultation with tribes, that tribes support this bill, members of the committee support this bill, professionals that are out there working and trying to make this thing happen support it. Maybe with that momentum behind it, we can make it happen. Your support is always appreciated, and Senator McCain.

The CHAIRMAN. Senator McCain.

Senator MCCAIN. I have no questions, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Stallings.

I now call on Mr. Harrison.

STATEMENT OF DAVID C. HARRISON, SENIOR POLICY ADVISOR, COUNCIL ON ENERGY RESOURCE TRIBES, DENVER, CO

Mr. HARRISON. Thank you, Mr. Chairman.

I'd like to begin by just providing some observations for the record and for the Administration's consideration as it undertakes its process of more detailed review and consultation with tribal leadership on developing their final position on the Indian Development Finance Corporation.

I guess, to begin with, the reasons given in the President's veto message last time—and, in large part, I suppose I'm reiterating what Mr. Stallings and Chairman Haskie have already said this morning—we, for our part, were very impressed with this committee's report on that bill as it was passed the last time. In studying that report and trying to lay that side-by-side with the President's view of the bill that he was vetoing, we just had trouble concluding that he was looking at the same bill that was sent to him, because we don't find the duplication that the Administration suggests is there, and we don't find that it would necessarily create the expensive bureaucracy, as he puts it.

In fact, as Mr. Stallings points out, one of the great advantages that we have seen from day one on this thing is to move some of these issues from a bureaucracy into a professionally run organization that can provide the kinds of support and technical assistance that is simply not available. We don't think that we say this with any animus, but we think it is not realistic to expect that the kind of financial, technical expertise and assistance that tribes will increasingly require can be realistically expected from the Bureau of Indian Affairs programs—particularly from those that administer those programs at the technical level at the agency and area offices, where their supervisors three levels up are hardly compensated at the level of somebody you would expect to be reviewing a multi-million dollar financial arrangement.

With regard to whether or not this bill addresses the underlying problems, I just offer the observation that your statement accompanying S. 143 and Senator McCain's statement accompanying the introduction of S. 1203 both make very many of the same points regarding the ultimate need for legislation such as this. But, as Steve points out, I think it is important to keep in mind that this is really not social legislation that we're involved with here, and it does need to be looked at and analyzed and positions taken based on its likely effect on improving the availability of credit, financial and technical business assistance to Indian country.

And, in that regard, I'd like to say: We are more relieved than we can say about the sentiments that have been expressed here this morning by Secretary Brown and by the committee regarding the commitment from both sides that the Administration and the committee will try to work together on these issues. When this committee and the Administration really can work together on these issues, our lives are so much easier out there where we live. We share Steve's confidence that Mr. Brown will find a great deal of support and near unanimity when he begins to consult with the tribal leadership and Indian businessman on an individual basis that some new approach is very much needed and that the approach that is reflected in S. 143 is the result of many years of effort and laborious analysis by people who have largely devoted their professional lives to these issues.

With regard to this bill, we see this as working very much in tandem with and as a companion to S. 1203. We'd like to say that some of the things that we find we are very much encouraged by in both of these bills. Some of the initial—what we regarded in the very early drafts of the previous Congress, some of what we call the "bias against tribal participation or tribal government participation" in these activities seems to largely have been removed from both of these bills, and we are very heartened by that and by the statements of the sponsors of both of these bills that the tribes, themselves, are going to have to play an essential and critical role in creating the kind of climate that each tribe may desire in providing the kinds of incentives that any individual tribe might regard either as desirable or not desirable.

Again, as Steve has pointed out, we are convinced, based on our experience, that tax incentives do work. And we believe that the particular incentives envisioned by S. 1203 have a great deal of potential for encouraging substantial investment and development on reservations.

We'd like to just put two issues on the record for the committee to consider in its further deliberations. The first one is one that was brought up in previous consideration of the Development Finance Corporation regarding whether or not any tribal enterprise's eligibility for 8(a) certification and programs is likely to be affected by its access to the Development Finance Corporation. And, with regard to S. 1203, we do have a question about whether or not the provision of incentives for attracting development—we want to keep in mind that our ultimate goal here, we hope, is to provide for Indian-owned—whether tribally owned or tribal participation in and with its own membership or Indian entities—the ultimate development of those reservation economies will rely finally on the creation and the maintenance of viable, Indian-owned enterprises.

And, to the extent that S. 1203 now specifically contemplates that the tribes, themselves, will have to be involved, the tribes, themselves, will not have to jump through any particular hoops and disavow involvement in or keep themselves apart from these decisions, we think there is a great improvement in the underlying concept of that legislation, and we greatly look forward to working with this committee in bringing both of these bills to the state of becoming the law of the land, and to any extent that we can be useful in the efforts of the committee and the Administration to re-

solve or reduce the differences in views here, we are very anxious to be a part of that process. We believe that to the extent the Administration's opposition is subject to any reconsideration based on the views that will be expressed by the tribal leadership and by existing Indian businessmen, we think that we are on a track here that will bring us beyond the threat of another veto.

We echo and associate ourselves entirely with the rather enthusiastic support and eloquent support that Mr. Stallings has given to the ideas underlying these measures, to the initiative and the leadership and the persistence that this committee has shown. We are delighted to be able to be here and offer whatever assistance we can be to bring it to that phase again.

Thank you.

The CHAIRMAN. Thank you very much, Mr. Harrison.

You mentioned the possibility of providing clarification to the intent of the operation of 8(a) as it relates to S. 143 and on the matter of tribal or Indian ownership. Could you get together with your colleagues and come up with language which you feel would strengthen these two measures?

Mr. HARRISON. We would be delighted to do that, and we appreciate the invitation to do so. Thank you.

The CHAIRMAN. Thank you.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Mr. Harrison, do you have any comment on the question I asked the other two witnesses about the tax exempt bond issue?

Mr. HARRISON. With regard to?

Senator MCCAIN. The fact that the Finance Committee placed restrictions, as you know, in the last Congress.

Mr. HARRISON. Senator, I think there can be no doubt in anybody's mind who is close to the efforts or the activities of attracting capital and financing ventures in Indian country that the removal, for all practical purposes, of the ability to attract to issue tax exempt bonds for other than roads, bridges, and sewers had a tremendous effect on the interest in the financial community in pursuing bond issuance as a means of financing ventures out there—although I am inclined to agree with views expressed here earlier by Mr. Goetting and Steve that I think this committee did very much to mitigate the harsh effects of that by authorizing a guarantee. And, to the extent that the guarantee greatly reduces the risk and thereby lowers the cost to the borrower, the potential is there if we can get that program underway.

Without attempting to be too cute, I'd suggest that there may be something instructive here in the fact that Congress provided that authorization in the 100th Congress and we are hearing today that we may have regulations implementing that program some time in June 1990, which will be 18 to 24 months after the law was passed. And if that is the kind of program that we are supposed to be relying on now or that your legislation is about to duplicate, then I think that is an example of the kind of shortcomings in the existing program that this committee will be hearing expressed all over the country and that the Secretary will be hearing expressed as he goes about the country conferring with these tribes.

I might like to point out one other thing, if I may, and that is to pick up another issue that Chairman Haskie alluded to—something that I suggest the committee give some consideration to. To the extent that Federal tax incentives, whatever they may be, whether they be the 936 exclusion or for infrastructure or property investment, to the extent that those may be subject to capture by a third economic party, third interest, namely the State, under the recent decision of the Supreme Court in the Cotton Case, we may need to give some consideration to how to make sure, if we are going to Federally legislate those incentives for Indian tribes, that they cannot be captured by a third-party interest before they reach the level which they are intended to benefit.

Senator MCCAIN. Thank you.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

May I now call on Mr. Goetting.

STATEMENT OF RAYMOND GOETTING, CHAIRMAN OF THE BOARD OF DIRECTORS, LAGUNA INDUSTRIES, INC., LAGUNA, NM, ACCOMPANIED BY DANIEL PRESS, GENERAL COUNSEL TO THE NATIVE AMERICAN INDUSTRIAL TRADE ASSOCIATION, WASHINGTON, DC

Mr. GOETTING. Thank you, Mr. Chairman. It is great to be here in support of these bills, S. 143 and S. 1203.

My name is Raymond Goetting, and I am the Chairman of the Board of Directors of Laguna Industries. Laguna Industries, Inc., is a wholly-owned New Mexico State-chartered corporation of the Pueblo of Laguna, a Federally-recognized Indian tribe. For those who many not be familiar with the Pueblo of Laguna, let me cover a couple of update statistics.

We have 230 employees now, 95 percent of whom are Native Americans. We have a plant of approximately 50,000 square feet, $1.8 million in inventories, a budget of $8.4 to $9 million annually, no company debt, contracts of over $30 million, an annual average of about $15 to $20 million of program activity.

We have received some recognition in the form of individual awards for our people and our company through the United Indian Development Association, the Department of Commerce, and SBA. But I'd like to say that it has taken us 9 years to get where we are—four in actual operation, five in preparation. And I'd like to say that the contributions to the community economy on the statement we have attached indicates that we have pumped into the community nearly $10 million for local community economic benefit, and we are proud of that.

We have recently been joining with other industries throughout Indian Country in establishing a Native American Industrial Trade Association. Our president, Ron Solimon, is chairman of that operation now, and we are underway. We have gotten together in terms of being able to demonstrate what can be done if the right preparation and the right processing actually takes place. So we want to be an example to those in the future who want to be provided with this kind of information.

I want to highlight these points in order to indicate the experience with which we review S. 143 and S. 1203.

Specifically, we support the plan of a separate organization which S. 143 creates. I have a great deal of prior experience in economic development activities on various Indian reservations, including my experience at the Pueblo of Laguna. In this prior experience, I have found that the spread of responsibilities through several Federal agencies for all of the elements necessary to make a complete financial package makes it almost impossible to work with. It is not uncommon for each of a variety of agencies to have different criteria and different priorities so that a financial package, for example, which is intended to compose of funds from BIA, ANA, HUD, Department of Labor, MBDA etc.—and it is actually complicated more so to accomplish in a given time frame because by the time you get a commitment on the first appropriation, it could expire by the time you get to the last one. Appropriations in two or three fiscal years from two or three sources make it completely aggravating, to say the least, to work their way through these processes to get funds. You risk the loss of losing part of it by the time you get to the end.

It is further complicated when you actually have loan guarantees and you are involved in bank financing, as well as overlaying that with SBA 8(a) set-aside provisions. A package of this nature really looks tremendous and sometimes so complicated that investors and outside people are a little reluctant to even take a good look at it. So we applaud the possibility of being one organization that can do all the work—and I emphasize all of it.

In section 102(a)(3), provision is made for long-term capital and working capital, but none is made for start-up capital. I would encourage the committee to give some consideration to the need to provide funds for planning start-up capital under certain criteria. The planning process leading to the successful development of a good working relationship with a mentor such as we had with Raytheon Service Company required approximately five years of effort, travel, and other preliminary investigative-type expenditures in order to create our industry before actual manufacturing start-up began.

The planning effort for Laguna Industries took at least four to five years. We had to find out what kind of work force we had, what size, and what their capability was. And so we had to make a study of that prior to the point of determining what direction the tribe was willing for us to go. What kind of infrastructure requirements would be there? Water? Roads? So we really had a problem selecting a product in the planning effort.

We strongly believe that there is a need to provide for the necessary capital, management and technical assistance to provide a sound planning process. We see too often the result of a lack of planning which leads to failure, and we have seen some failures almost built into the plan because it is impossible to carry out a successful plan with no technical assistance, as some of the previous people have indicated.

The inclusion of continued support through a project once it is ongoing as contained in section 102(a)(3)(c) is excellent. The unavailability of such managerial assistance and technical support in

prior years has often resulted in failures that could have been avoided. The BIA, EDA, and other Federal agencies which have attempted to assist reservation-based Indian economic development have often been staffed with people experienced in governmental procedures rather than people who are personally and technically competent and experienced in the different management disciplines necessary for business. They don't come from business-oriented backgrounds, and we need that.

By way of example, I want to stress that Laguna Industries was assisted for over two years with management guidance from Raytheon Service Corporation. Today we employ several highly-skilled non-Indians with 25 to 30 years experience in relevant administrative, financial, and technical areas. These people assist in guiding and training Laguna Pueblo members to ensure that their knowledge is passed on to our Indian people and become able to succeed. We hope to support the operation entirely by Laguna people eventually. We are trying to develop the training through that kind of access to experts.

This type of mentor relationship should be encouraged to the maximum degree possible in S. 143. Even though the Pueblo takes pride in the fact that we have a greater number of young college graduates now than in the past, our young people still require aggressive experience in their chosen field. Through an appropriate mentor relationship within Laguna Industries, we are able to provide an environment in which that nurturing process can occur.

In section 102(b)(2)(a), an Indian business enterprise is deemed to meet the requirements of the paragraph if the corporation makes an independent determination as to sound organizational and financial structure. The committee may wish to add language which requires a sound management plan and management capability, as well as the plan of financing.

In addition to the lack of adequate capital, the lack of adequate management expertise has often been the downfall of many tribal economic endeavors. And, as there is a difference between sound organizational structure and sound, skilled management, the committee may want to specifically address this matter in the legislation.

In section 103(2), the corporation is empowered to make agreements and contracts with persons, Indian tribes, and private or government entities. I'm not sure if tribally-owned, State-chartered corporations such as Laguna Industries is included in this langauge. As there may be tribally-created and owned entities such as Laguna Industries that are not the same as the tribe, and as they may not be viewed as private or governmental entities, it might be worthwhile for the committee to consider expanding upon this language.

In section 103(15), a number of different functions are included but, again, I think it is worth emphasizing that in addition to fiscal management and project development, ongoing management is critical to the success of any industry in business. The explicit mention in section 15 of that type of management would appropriately highlight its importance.

In section 104(b) there is no requirement that members of the board of the proposed corporation must have certain successful ex-

perience in a variety of business enterprises. Rather, in making appointments to the board, the President is merely obliged to take into account the experience of the individual appointees in private business enterprises and in development of commercial finance. We have found, at Laguna Industries, that having on our board of directors and within the company in key positions, employees that have specific, private sector, long-term technical and managerial experience. This has been critical to our success.

I strongly urge the committee to consider the feasibility of greater specificity for eligibility for a position on the board of directors of the corporation. It is absolutely essential that this board should be comprised from the real business world and not necessarily the political world. A combination might be acceptable. To the extent that it is feasible to make those requirements more explicit, we would encourage you to do so.

We also strongly support S. 1203. Presently, the burden of promoting reservation economic development falls almost completely on Indian tribal governments. This is a very heavy burden. S. 1203 will help to distribute the burden by providing the private sector with incentives to locate their businesses on Indian reservations. Such incentives are long overdue.

The Indian Economic Development Act of 1989 does not specifically provide for tax credits for Indian oil and gas development and production, including necessary transmission and transportation. A number of Indian tribes produce oil and gas, as well as other types of reservation-based materials—minerals and so forth. S. 1203, as is currently drafted, does not specifically address the needs of these industries, whether they be owned by tribal governments or individual Indian ownership. We want to emphasize again that individual Indian ownership of construction, mining, and that sort of companies may come about and should be eligible for this kind of incentive.

This committee, I'm sure, is aware that the U.S. Supreme Court in its last term decided the case of Cotton Petroleum versus New Mexico Department of Taxation and Revenue. The Supreme Court held that States may tax reservation production of oil and gas by a non-Indian. The import of this decision affects a significant number of tribes in New Mexico and elsewhere. The Pueblo of Laguna, for example, was, for years, dependent upon its uranium mineral-based economy. Similarly, other tribes may be dependent upon mineral extraction for their economies.

We would strongly encourage this committee to consider adding separate sections to deal explicitly with mineral development on Indian lands.

There are others that lead themselves to general tax treatment along with manufacturing or other types of industries and, like Laguna, face a huge reclamation effort after the open pit mining operation is completed. We are in the process now of reclaiming abandoned mines and open pit low grade ore tailings onsite and to prepare them for protection as hazardous wastes.

There are special tax considerations and tax credits which would be extremely helpful to those reclamation efforts and may not be contemplated in S. 1203 as currently drafted. We would encourage

the committee to examine the feasibility of including special tax credits for the reclamation investments.

In conclusion, Mr. Chairman and members of the committee, on behalf of Laguna Industries, the Pueblo of Laguna, and Indian people generally, we are deeply grateful to you for your interest, hard work, and dedication to assist in this endeavor. I want to say that any efforts in self-determination or economic self-sufficiency be provided for immediate attention. The urgency is there, and it has been.

Thank you very much.

[Prepared statement of Mr. Goetting appears in appendix.]

The CHAIRMAN. Mr. Goetting, I thank you very much.

Your observation that appointments to boards and commissions and special committees should have men and women with business backgrounds is well taken, but I am certain you have noted that for nearly 200 years our governors and Presidents have had the power to appoint——

Mr. GOETTING. I haven't experienced all the 200 years. [Laughter.]

The CHAIRMAN. We are in a deep debate at the present time on the appointment of ambassadors, for example. There is a great disagreement as to whether they should be political contributors or men and women of diplomatic skill.

Mr. GOETTING. There is a place for both. We need your help, and we need the expertise of private industry.

The CHAIRMAN. You have described your experiences for many years, and you cited one where you may have to go through five different agencies and bureaus and it may take you 1 or 2 years to get through the process. Would you suggest that the slow down was deliberate or incompetent?

Mr. GOETTING. I'd say unfamiliarity with the process of economic development of actual operating of a business and what it takes to prepare for it. I just feel like the people are governmentally oriented more than private industry experienced. To actually start a business really takes some good experience, and people fail because they don't have it. There are two reasons why businesses fail: One is the under-capitalization, but I think that's partially because of the second reason which is lack of preparation and knowledge of what it takes to really finance a business and to prepare adequate information in advance. That takes an experienced managerial-type individual to do that. That's the kind of experience we have difficulty finding.

The CHAIRMAN. So you would say the bureaucracy was trying its best to help, but didn't know how to help you.

Mr. GOETTING. I give them credit for wanting to do what's right. I feel like their experience has been grown up in the governmental purposes and never been out in the real world as far as earning a living by the actual doing of running a business and meeting the payroll day to day and payday after payday and how do you go and where do you go to get the money for support and how quickly the decision has to be made. And if somebody doesn't pay their bill when you're selling goods and you don't get the money in, you may not be able to pay the payroll for the next week, and you've got to find those—you can't wait until the regulations are written 6

months, 9 months, 12 months, or 18 months down the road. You can't wait for those bureaucratic processes. Once you start you either go up or you are out.

The CHAIRMAN. Laguna Industries has been in existence for about 9 years. The first 5 years, as you noted, were for planning, and the last 4 years you have been operational. During that planning phase, what role did the BIA play?

Mr. GOETTING. Well, they were waiting for us to submit a proposal. In the first place, we had no idea what kind of a proposal to submit until we really found out what kind of capability our work force had, what our unemployment was, what kind and size we were looking for, and what kind of work and product would be suitable to have. BIA was willing to listen, but I can't say that they played any role during the planning stage. Whether or not we needed something that needed a lot of water, whether we had to have extremely high demand on power, all of the things that are difficult—and roads and transportation and shipments and receiving of raw materials. Whatever it was that we were going to do had to be developed before we could even develop a proposal to submit.

Now, that kind of money wasn't really available from BIA. As I understand it, ANA is the only one that can provide the kind of planning operational funding needed. Then you determine that you have to train the people a year or so in advance of actually putting them to productive work. When you go into a city that has had manufacturing experience and you advertise for welders, for instance, there are a lot of experienced welders that show up with certain labor and technical expertise. When we had to train them, that's a different proposition, and we had to go to the Department of Labor for training money.

And so you go down the line right along the way to find out what kind of money, what kind of priorities, what kind of authority this agency has to provide it. And when you add it all together, it seems difficult to get it from any one. Not one agency can do it all.

Normally BIA money is distributed throughout the Area offices, throughout the Agencies, and the result is a small, insufficient amount.

Our total investment before we began to climb out of the red into the black and show a profit, we spent nearly $5 million. If that is the capital requirement to provide for a base of 193 employees, which we had at the time we then came into a profit level in fiscal year 1988, then that's how much money we would need from whatever source. Even so that didn't include some of the planning time and expense that Raytheon spent and the tribe spent for three or four years. Raytheon paid their own expenses, we paid ours. In addition we got money from ANA to overhaul an old building in order to use it.

The CHAIRMAN. So the important aspects of management and training did not come from BIA, but came from your source and Raytheon?

Mr. GOETTING. Right.

The CHAIRMAN. So you did it your way?

Mr. GOETTING. Yes; we like to say that we did it our way.

The CHAIRMAN. I thank you very much.

Mr. GOETTING. I would hope that, in listening to the Secretary comment about getting input from the tribal and the Indian business world, that they don't wait too long. I would hate to wait six months and nine months and right through regulations to provide for the activity. And, like Chairman Haskie, we need it today.

The CHAIRMAN. Actually you needed it yesterday.

Mr. GOETTING. We needed it 200 years ago. [Laughter.]

Thank you.

The CHAIRMAN. Thank you very much, Mr. Goetting.

And now the manager of Pricing, Profitability and Scenario Development of U.S. West Communications, Mr. Brunt. Welcome, sir.

STATEMENT OF DAVID BRUNT, MANAGER, PRICING, PROFITABILITY AND SCENARIO DEVELOPMENT. U.S. WEST COMMUNICATIONS, DENVER, CO, ACCOMPANIED BY JULIE DAWSON, DIRECTOR, TAX RESEARCH AND PLANNING DEPARTMENT

Mr. BRUNT. Chairman Inouye and members of the Select Committee on Indian Affairs, I appreciate this opportunity to appear here today and testify in support of S. 1203, the Indian Economic Development Act of 1989.

I have a written statement to read. I have with me Julie Dawson, the Director of our Tax Research and Planning Department, whom I'd like to have accompany me and be available for any questions that you may have.

The CHAIRMAN. Your prepared statement will appear in the record immediately following your oral remarks, so you may summarize, sir.

Mr. BRUNT. My name is David Brunt and I am an economist for U.S. West, one of the seven regional holding companies formed out of the AT&T divestiture. I have masters degrees in economics and planning from the University of Arizona. In my current position I develop and evaluate business plans and strategies centering on the long distance companies who are customers of U.S. West.

In addition to my work for U.S. West, I am also tax commissioner for the Navajo Tribe, an appointment I've held for three years. I grew up and graduated from high school in Tuba City, Arizona, in the Navajo Nation. I have also been published on American Indian taxation issues.

Not only do the facts and statistics support the need for S. 1203, but my personal experience leads me to the same conclusion. In school, I competed with my Indian friends. My classmates, many of them, were sharp, competitive, and confident they could do something to make a difference for their people. I know, had they had the educational and employment opportunities I've had, many of them could easily surpass me, as some have. But too many of them, through the years, have fallen victim to despair. My sense is that very little has changed to improve this situation since 1965, when I graduated. In terms of human suffering, I see a growing problem that demands decisive action.

My personal background and tax post, along with my job at U.S. West, gives me a perspective on the issues before this committee. My company is committed to the economic development of the western United States and is aware of and concerned about the

need for jobs and a decent economic foundation for this country's Indian lands.

The desire of American Indians to get the education and economic self sufficiency necessary to move ahead is strong. Native Americans are the poorest and often most forgotten minority population. Of America's 1.37 million Indians, 63 percent live on reservations, and nearly half of those live below the poverty level. Unemployment among Indian males ages 20 to 60 is 50 percent, with some reservations having unemployment rates over 90 percent.

My employer's interest in economic development in the western United States is fundamental. What is good for the west is good for U.S. West. Jobs, growth, prosperity—those things all translate into an increased demand for telephone service and economic success.

Beyond that, I believe U.S. West has a strong commitment to being a good corporate citizen. The company's record on minority purchasing and hiring is exemplary. In terms of having a positive impact on communities it serves, U.S. West goes the extra mile. Of the nearly 260 total reservations in America, 209 are in the U.S. West territory, with 89 percent of all Indians living on reservations in our 14-state serving area. U.S. West provides local telecommunications service to many of those reservations. It also provides, through the U.S. West Foundation, grants for projects, including the study of resources needed for stimulation of economic development and the economic self-sufficiency desired by American Indians.

U.S. West is generally supportive of any legislation that encourages economic development in rural areas. The company knows that rural network modernization programs are critical to providing the telecommunications infrastructure that is vital to creating jobs and business opportunities. U.S. West is continually working—within existing regulatory and business constraints and limitations—to modernize plants and equipment and improve the quality and expand the range of products and services that can be made available in rural areas.

From both a U.S. West perspective and my own personal perspective, I applaud the creative thinking and important concepts embodied in S. 1203. This comprehensive approach to Indian development could go a long way toward bringing much needed economic vitality to the Indian reservations.

As I see it, the dilemma is this: while tribal governments have a right to levy and collect taxes, overlapping State and tribal taxation creates a disincentive to companies considering making investments on reservations. Tribal taxing authority is a little like holding a ticket for a plane which does not have any fuel—you can board, but you're not going anywhere. And yet, without economic development, the future viability of tribal governments is in doubt. It is important to address this issue because Indian tribes cannot fairly compete for investment capital until their right to govern no longer interferes with their ability to exist.

Where a tax disincentive exists, tax law provides an appropriate remedy. With the recent Cotton Petroleum Supreme Court decision, the need for such a remedy is heightened. The benefits proposed for reservation businesses in S. 1203 provide an appropriate remedy to double taxation and are consistent with benefits provid-

ed for other jurisdictions with independent taxing authority such as U.S. Possessions.

The reservation investment tax credit proposed in S. 1203 is an appropriate means of stimulating investment. The ultimate beneficiary of investment tax incentives are workers and customers. This is particularly true when regulated public utilities receive these benefits—the regulator insures that tax savings are ultimately passed on to the customer. For U.S. West, it can provide incentives to modernize network facilities sooner than they would without the incentives, assuming all other factors are equal.

The targeted jobs credit included in S. 1203 is an effective response to the employment conditions as they exist on reservations today. Targeted job credits have historically been used to encourage hiring practices that benefit economically disadvantaged people. In light of the severe economic conditions in Native American communities, it is appropriate to include qualifying members of tribal groups among those qualified for the targeted jobs credit.

Though I view S. 1203 as a fitting response to many hardships faced by American Indians, I am concerned about the practical administration and division of assets required to qualify income under the bill. A simpler approach would involve drafting rules to allocate taxable income through apportionment factors or sourcing rules. If U.S. West were required to form separate subsidiaries to serve each reservation, it would create an administrative problem which could exceed any real benefit. In fact, it is questionable whether regulated utilities could separate assets from the current rate base to form a separate subsidiary.

I want to touch just briefly on the revenue concerns which need to be considered with this legislation. There's no doubt in my mind that after this committee weighs the overall continuing cost—both in terms of human suffering and government support programs—against the benefits of an employed Native American work force and the positive tax impact from creating those jobs, the balance will clearly support this legislation.

Tax incentives have historically been used to move economic activity between locations. They are particularly effective in the absence of pervasive market conditions which would otherwise discourage investment in an area of economic hardship and can, I feel, be successfully applied in the context of Native American nations.

We have also prepared a summary sheet dealing with the technical issues to be considered by this committee. It is attached to the back of our written testimony, and we would like to have it made part of the record.

In closing, let me again applaud the committee's interest in these issues and offer the continued support of U.S. West in addressing them. By working together, I would hope we could achieve a sound tax policy that both supports economic growth and meets the special requirements of tribal sovereignty.

Thank you for the opportunity to testify.

[Prepared statement of Mr. Brunt appears in appendix.]

The CHAIRMAN. Mr. Brunt, on behalf of the committee I thank you and the leadership of your organization for responding to our invitation to participate in these hearings. You may not be aware,

but this committee sent out several invitations to many organizations, business enterprises doing business in Indian country, and for one reason or another all of them found valid excuses to regret and not appear. I can't understand how an organization can have a prior engagement. They must have several officers in every company. If the president can't attend I am certain the vice president can. These were all major concerns such as yours. So I wish to thank you especially.

Mr. BRUNT. Thank you.

The CHAIRMAN. And I wish to assure you that you words will be very carefully considered.

Mr. Stallings, do you have anything to say about Mr. Brunt's concern that he expressed in his closing remarks about the practical administration and division of assets required to qualify income under S. 1203?

Mr. STALLINGS. Yes; if I might, before responding to that I have a couple of additional comments.

We have consulted with people in private industry on the provisions in S. 1203 and I think it is important to recognize that there are companies like General Dynamics and Northrop who have current facilities on Indian reservations who look very favorably at this legislation and would provide written support to this committee or even the Tax Committee in support of S. 1203.

Also, I would like to underscore something I said earlier from a standpoint that all of these pieces of legislation are very developmental oriented. That connotes taking action. I think, in the BIA's current analysis of what it is doing, it really needs to review its developmental role versus one of a passive reviewer, analyzer, and "turn downer" of Indian business deals.

There is no equity in a plan that splits all the resources and sends it to the area offices somehow based on population. As Ray Goetting said, you never can acquire the amount of capital in an area that it really takes to make a good deal work. If they had not done Laguna Industries outside of the Bureau of Indian Affairs, there would be no Laguna Industries.

Also, it looks as though the BIA is currently looking at the bond guarantee issue as another loan program. While a bond is a debt instrument, it isn't a conventional, commercial loan. And the BIA needs to look at the issue of bonds as securities and implement regulations around security issues, not around conventional lending policies. Again, it is a different approach, this developmental role.

As to the asset question, I think it is an important issue from the standpoint that any assets on a reservation that would be developed in the future, is going to require some incentives. But also, from the standpoint of Ray Goetting's comments, the tax benefits to individual Indians and resource extraction tax benefits requires consideration in S. 1203.

Clearly there is going to be a problem with creating any of these incentives if the provisions—beyond taxing just resource extraction, but even taxing infrastructure investment. It negates all of the incentives created in S. 1203. So a provision for tax remedies in 1203 for resource extraction and benefits to the companies that do investment on Indian reservations will create an environment

where investments will actually take place. Without that, it's not going to happen with the possibility of dual taxation.

The CHAIRMAN. Can you and Mr. Goetting get together with your staffs and draft appropriate language that would cure this?

Mr. STALLINGS. Yes, sir.

The CHAIRMAN. I would appreciate that very much. We have been witnessing too much talking and very little action, and I want to see action being taken on these two measures.

Once again, Mr. Brunt, I thank you very much. Please convey to your superiors my personal gratitude. I am also chairman of the Communications Committee. [Laughter.]

So that will be noted when I deal with you people in another committee. [Laughter.]

Gentlemen and ladies, I thank you for the patience you have shown and the contribution that you have made this morning. The problems we considered today are very important and this committee intends to do something about them.

The fact that members were not here should not concern you because we have several measures being marked up. In fact, I am supposed to be at a Commerce Committee meeting at this moment. The floor is considering two appropriations measures and the defense bill. And so I hope you will understand their absence does not in any way indicate their lack of interest.

With that, I thank you again.

The hearing is adjourned.

[Whereupon, at 11:10 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

OPENING STATEMENT OF SENATOR DANIEL K.INOUYE
CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS
FOR
HEARINGS ON INDIAN ECONOMIC DEVELOPMENT LEGISLATION
JULY 27, 1989

GOOD MORNING. I WOULD LIKE TO WELCOME EVERYONE TO THE COMMITTEE'S HEARINGS ON INDIAN ECONOMIC DEVELOPMENT ISSUES. WE WILL BE TAKING TESTIMONY FROM THE ADMINISTRATION REPRESENTED BY THE HONORABLE DR. EDDIE BROWN, ASSISTANT SECRETARY FOR INDIAN AFFAIRS OF THE UNITED STATES DEPARTMENT OF THE INTERIOR REGARDING S. 143, THE INDIAN DEVELOPMENT FINANCE CORPORATION ACT. DR. BROWN WILL ALSO BE RESPONDING TO A NUMBER OF QUESTIONS WE HAVE RAISED REGARDING THE ADMINISTRATION OF THE INDIAN FINANCING ACT PROGRAMS BY THE BUREAU OF INDIAN AFFAIRS.

FOLLOWING THE ADMINISTRATION PANEL WILL BE REPRESENTATIVES OF THE NAVAJO NATION, THE LAGUNA PUEBLO, THE NATIONAL CENTER FOR AMERICAN INDIAN ENTERPRISE DEVELOPMENT, THE COUNCIL OF ENERGY RESOURCE TRIBES, THE NATIVE AMERICAN INDUSTRIAL TRADE ASSOCIATION AND A REPRESENTATIVE OF THE U.S. WEST COMMUNICATIONS CORPORATION, MR. DAVID BRUNT, WHO ALSO SERVES AS A MEMBER OF THE NAVAJO NATION TAX COMMISSION. IN ADDITION TO THE OTHER ISSUES BEFORE THE COMMITTEE, THESE NON-GOVERNMENTAL WITNESSES WILL DISCUSS THEIR VIEWS OF THE PROPOSAL SPONSORED BY MY DISTINGUISHED COLLEAGUE, THE VICE-CHAIRMAN OF THIS COMMITTEE, SENATOR JOHN McCAIN, S. 1203, THE INDIAN ECONOMIC DEVELOPMENT ACT OF 1989.

AS MY COLLEAGUES ON THIS COMMITTEE KNOW, I HAVE VISITED VIRTUALLY EVERY PART OF INDIAN COUNTRY OVER THE PAST SEVERAL YEARS. I HAVE GONE ONTO THE RESERVATIONS OF INDIAN NATIONS, TRIBES AND BANDS IN THE NORTHWEST, THE SOUTHWEST, THE GREAT PLAINS, OKLAHOMA, CALIFORNIA AND ALASKA. EVERYWHERE THAT I HAVE GONE I HAVE SEEN THE EFFECTS OF LONGSTANDING AND DEEP-SEATED POVERTY. BECAUSE OF A LACK OF ECONOMIC OPPORTUNITIES AND THE HEALTHY SELF-ESTEEM THAT COMES FROM PRODUCTIVE EMPLOYMENT, THE NATIVE AMERICAN PEOPLE ALL ACROSS THIS COUNTRY EXPERIENCE THE MOST SEVERE SOCIAL PROBLEMS OF ANY OTHER GROUP IN THIS COUNTRY. THE UNEMPLOYMENT RATE ON THE MAJORITY OF INDIAN RESERVATIONS IS SIMPLY INCOMPREHENSIBLE TO THE AVERAGE AMERICAN. DURING THE HEIGHT OF THE SO-CALLED GREAT DEPRESSION IN THE 1930'S UNEMPLOYMENT AVERAGED 25 TO 30%. IN 1989 THE AVERAGE RATE IN INDIAN COUNTRY IS 52%!

I BELIEVE AND I KNOW THAT THE OTHER MEMBERS OF THIS COMMITTEE BELIEVE THAT THESE ECONOMIC CONDITIONS IN INDIAN COUNTRY ARE A NATIONAL DISGRACE! THESE PROBLEMS COMPEL US TO SEEK OUT AND PURSUE EVERY POSSIBLE SOLUTION INCLUDING, MOST PARTICULARLY, THOSE IDEAS THAT ARE REPRESENTED IN THE LEGISLATION BEFORE THIS COMMITTEE TODAY. S. 143, THE INDIAN DEVELOPMENT FINANCE CORPORATION ACT, WOULD ESTABLISH A FINANCIAL INSTITUTION WHICH IS LARGELY MODELED AFTER THE WORLD BANK. THIS IS A PROPOSAL WHICH HAS BEEN TEN YEARS IN THE MAKING AND REPRESENTS THE CREATIVE THINKING OF A GREAT MANY INDIAN LEADERS AND THEIR

TECHNICAL EXPERTS. THE BILL WOULD AUTHORIZE AN APPROPRIATION OF $25 MILLION OVER TWO YEARS, A SUM WHICH SEEMS TO ME TO BE VERY MODEST IN COMPARISON WITH THE FUNDS WHICH THE UNITED STATES HAS CONTRIBUTED TO THE WORLD BANK OVER THE YEARS.

THE INDIAN ECONOMIC DEVELOPMENT ACT OF 1989, S. 1203, WOULD AUTHORIZE A VERY POWERFUL SET OF INVESTMENT INCENTIVES IN THE FORM OF FEDERAL TAX CONCESSIONS FOR PRIVATE INVESTMENTS IN INDIAN COUNTRY. I SUPPORT SENATOR McCAIN'S PROPOSAL AND I LOOK FORWARD VERY MUCH TO THE VIEWS OF OUR WITNESSES REGARDING THIS LEGISLATION. SINCE THIS BILL AMENDS THE TAX CODE IT HAS BEEN REFERRED TO THE FINANCE COMMITTEE BUT I BELIEVE IT IS QUITE APPROPRIATE FOR THIS COMMITTEE TO TAKE TESTIMONY REGARDING THE INDIAN POLICY RAMIFICATIONS OF THE BILL AND ITS POTENTIAL IMPACT ON THE ECONOMIC CHALLENGES IN INDIAN COUNTRY.

OUR FIRST WITNESS THIS MORNING IS THE HONORABLE EDDIE BROWN. DR. BROWN, IT IS MY PLEASURE TO WELCOME YOU TO THIS HEARING.

STATEMENT OF EDDIE F. BROWN, ASSISTANT SECRETARY - INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE, ON S. 143, THE INDIAN DEVELOPMENT FINANCE CORPORATION ACT, AND ON THE IMPLEMENTATION OF THE 1988 INDIAN FINANCING ACT AMENDMENTS.

July 27, 1989

Mr. Chairman, I am pleased to be here to discuss S. 143, a bill to establish the Indian Development Finance Corporation, and our implementation of the Indian Financing Act amendments of 1988 (P.L. 100-442).

I would like to preface my remarks by saying that in my confirmation statement, I indicated my desire to work closely with the Congress to carry forward the commitment of making the ideals of tribal self-government and self-determination a reality. Realizing the important role that Indian economic development will play in accomplishing these ideals, I would like to take this opportunity to express my desire to establish a cooperative and productive working relationship with your Committee in our mutual efforts to assist tribes in their efforts to promote Indian economic development.

President Bush, Secretary Lujan, and I share the conviction that sound reservation economies must be developed if tribal governments are to be successful in their efforts to enhance the quality of life in American Indian communities. It is with this in mind that the Department of the Interior has placed a high priority on working with tribal governments to strengthen Indian economies. We hope to achieve this by supporting tribal governments in their central role in guiding economic development on Indian lands. To do this, economic development efforts must be responsive to tribal development community plans and regulatory mechanisms. Tribes also should control the use of tribal resources, including tribal lands, natural resources, and dollars. In addition, we plan to assist tribal governments in creating realistic conditions for economic development on Indian lands. To do this, we must develop and strengthen an educated workforce, as well as improve physical infrastructure on Indian lands (for example, roads and housing).

Our goal for tribal economic development is to initiate and support economic development projects on Indian lands that results in the meaningful employment of tribal members and to create profits that can be reinvested in reservation economies.

Within the next 90 days, I will begin discussions with elected officials of tribal governments. One of the topics to be discussed is how the Federal government can best support tribal governments in their economic development efforts. After we have met with tribal governments, we will be prepared to draft a tribal economic development initiative. Once an initiative has been approved within the Administration, we would want to enter into a dialogue with the Committee.

To get to the specific subject of this hearing, Senate Bill 143 is identical to the language in Title II of the Enrolled Bill H.R. 3621, which was vetoed by President Reagan on November 2, 1988. A copy of President Reagan's veto message is attached.

The objections raised by President Reagan at that time are still relevant and appropriate today. In short, S. 143 takes the wrong approach to solving the economic development problems in Indian country. Therefore, this Administration strongly opposes enactment of S.143.

Specifically, S. 143 would create an additional new organization to administer functions that to a large degree already exist within the Bureau of Indian Affairs, and would not address the underlying problems of economic development in Indian country. Moreover, it places the Federal government at at substantial financial risk. I note that substantial federal expenditures have been made in past years to promote Indian economic development. These expenditures have not been as effective as they could be. The task facing us

today is to ensure that future expenditures in this area provide deeper and more lasting benefits. I do not believe that the principles embodied in S. 143 as currently structured, would yield such benefits.

Given our strong objections to S. 143, we are prepared to work with the Committee to strengthen the existing credit programs and address other barriers affecting Indian reservation economies. To this end, I have begun my review of the 1988 Indian Financing Act amendments and of the Bureau's various credit and financing programs. While I believe that more needs to be done in the area of Indian economic development, I have found from my initial review that the Bureau is doing a good job in this area. A status report discussing our implementation of the 1984 and 1988 amendments to the Indian Financing Act is attached for the Committee's information.

I would like to inform the Committee that the final regulations incorporating the 1984 amendments to the Indian Financing Act were signed off on July 21, 1989, and will be published in the Federal Register the week of July 31.

I look forward to working with the Committee to seek ways to maximize the long range beneficial impact of these and other Federal programs designed to support tribes in their efforts to promote economic development on Indian lands.

I would like to re-emphasize my interest and desire to enter into a continuing dialogue with the Congress on ways we can support tribal governments in their efforts to strengthen and enhance their environments so as to promote economic development.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

ATTACHMENT 1

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release November 2, 1988

MEMORANDUM OF DISAPPROVAL

I am withholding my approval of H.R. 3621, which would establish, among other things, an Indian Development Finance Corporation that would be authorized to provide development capital to Indian businesses that meet certain criteria. The bill would have created an expensive and unnecessary new bureaucracy and duplicated currently existing programs. It would not have addressed the underlying problems of economic development in Indian country. Finally, the legislation places the Government at risk of substantial financial loss and does not provide sufficient authority for governmental oversight of the financial activities that could result in such loss.

Instead of creating a new institution to deliver additional capital, I believe that we need to better utilize existing sources of capital, including such Federal programs as the Indian Financing Act. In this regard, I recently signed Public Law 100-442, which increased the ceiling on guaranteed loans for Indian businesses under the Indian Financing Act from $200 million to $500 million, raised the limitation on loan guarantees to individual Indian and Indian economic enterprises from $350,000 to $500,000, and provided other means for reservation economic development. Sufficient authority, therefore, exists to carry out the activities envisioned in H.R. 3621.

I would also emphasize that H.R. 3621, with its further proliferation of Federal credit programs, is contrary to this Administration's long-standing and ongoing efforts to manage more effectively Federal credit programs.

Because this legislation takes the wrong approach to Indian economic development, I am withholding my approval of H.R. 3621. I note that this bill also contains an unrelated and beneficial provision relating to the transfer of Federal land in Southern California to several bands of Southern California Mission Indians. My disapproval of H.R. 3621 does not affect this needed legislation, which was also included in H.R. 2677, an omnibus Indian affairs bill that I have already approved.

RONALD REAGAN

ATTACHMENT 2

In response to your letter of July 12, 1989, I would now like to discuss our implementation of the 1988 Amendments to the Indian Financing Act. In response to a request from a tribe for a bond guarantee, we determined that because of the language contained in Section 4 (c) of the Amendments, it was not possible to provide the requested bond guarantee. At the request of the tribe, we met with members of your staff to discuss our determination. The language in Section 4 (c) provides:

> "Any new credit authority (as defined in section 3 of the Congressional Budget and Impoundment Control Act of 1974) which is provided by amendments made by this Act shall be effective only to such extent and in such amounts as may be approved in advance in appropriation Acts."

Our position on this issue is that until we receive sufficient budget authority to support the implementation of the bond programs and the regulations for these programs are published, no guarantees can be made. We have completed our first draft of the proposed regulations.

Concerning the development of the regulations for the taxable bond guaranty program, our first draft was structured along the lines of the amendment language which stated that any issue of bonds shall be deemed a loan for certain sections of the Act. These changes were incorporated into the present regulation (25 CFR 103) for the loan guaranty program. After review of this first draft, it became apparent that such regulations for bond guarantees were difficult to understand. We, therefore, decided to have separate regulations for taxable bond guarantees (these will be designated as 104).

The regulations for a newly authorized supplemental surety bond guarantee program are based on a Memorandum of Understanding that has been developed

with Small Business Administration. These regulations are also being proposed as a separate section of the Code of Federal Regulations (these will be designated as 105). The completion date for incorporating the 1988 amendments into our regulations is June 30, 1990.

As for the request for appropriations to satisfy Section 4 (c), the budget for FY 1991 was the earliest budget that we could request funds.

For your information, we are providing the following status report on the other amendments to the Act:-

1. Increase the loan guaranty limitation on individual Indians from $350,000 to $500,000.

This increase has been reflected in our final regulations incorporating the 1984 amendments to the Indian Financing Act. As stated earlier, these regulations will be published in the Federal Register next week.

2. Allow for the sale of loan guarantees to any person.

This is being incorporated into our regulations presently being drafted. We would, of course, honor the sale as authorized by the law, if requested.

3. Increase our loan guaranty ceiling from $200 million to $500 million.

This allows us to have an outstanding balance in our loan guaranty program up to $500 million. As of March 31, 1989, the outstanding balance in the loan guarantee program is $184.9 million. This does not, however, allow us to make loan guarantees of $300 million at this time. We have to request annual loan guaranty ceiling and appropriations for interest subsidies in the budget process. Our budget request for FY 1989 and 1990 was for $45

million. For the past two years, Congress has removed our requested ceiling and authorized us to make guaranteed loans to the extent of our authority and resources available. This could result in loans being guaranteed for more than $45 million in FY 1989.

4. Require that the Bureau notify Congress of any deficiencies in reserve for losses on loans or surety bonds guaranteed.

At this time, there are not any deficiencies in our reserve for losses on guaranteed loans. Our annual budget submission will include more information on the status of the loan guarantee reserve.

The 1984 Amendments to the Indian Financing Act authorized us to request annual appropriations for interest subsidies, reimbursement for losses, and management and technical assistance.

We have received annual appropriations for interest subsidies and management and technical assistance. Our budget request for FY 1990 includes $647,000 to cover potential losses from defaulted loans.

5. Authorized that a contractor to a Federal agency under any Act of Congress may be allowed an additional 5 percent of the amount paid in carrying out the contract if such subcontractor or supplier is an Indian organization or Indian-owned economic enterprise.

Since this involves any Federal agency of the U. S. Government, OMB is presently reviewing this provision to determine the proper procedure for implementation.

You also requested that we provide a briefing on the status of the loan guaranty and revolving fund for loan portfolios of our Credit and Financing Office.

The average maturity for loans under our programs is 15 years. Generally, the maturity of loans is based upon the purpose for which the loan proceeds are to be used. Operating loans are normally made for not more than two years; equipment loans are for the useful life or a maximum of ten years; and loans for building and the purchase of land are from 15 to 20 years, with a maximum of 30 years.

As for the record of defaults, we would like to point out that our financial assistance programs are last resort sources. As such, our loan portfolios contain loans that cannot be obtained elsewhere. These loans are generally higher risk loans.

As of March 31, 1989, over $227 million in loans were made, against which we have written off $24.8 million, or 10.5 percent. Under the loan guaranty program, we have guaranteed a total of over $285 million in loans, against which we have written off $4.3 million, or slightly more than 1 percent. As for defaults under this program, we have paid claims for losses from private lenders on defaulted loans of over $35.9 million. This does not mean that we have lost this amount of money. Once these claims are paid to lenders, all rights to that particular loan are assigned to us and these loans are classified as direct loans under our loan guaranty program. We must then determine whether to continue to support the business, or liquidate it. Of the $35.9 million in defaulted loans, we have collected $1.9 million in principal and interest, realized over $16.4 million from liquidations, written off $4.3 million, leaving a balance of $15.4 million. Some of the remaining balance will have to be written off.

The outstanding loan balances as of March 31, 1989, are $184.9 million in guaranteed loans and $104.6 million in revolving loans. We estimate that we will make over $50 million in guaranteed loans and over $10 million in revolving loans this fiscal year.

In response to your request for loan types, we are providing this information for our guaranteed loans for the past two fiscal years.

	($ in millions)	
1987 1988		
Agriculture	$6.7	$12.3
Manufacturing	7.6	0
Office buildings	6.2	0
Wholesale/retail	4.3	5.9
Land purchase	3.2	4.5
Tourism	2.5	2.3
Service related	1.3	3.0
Other	.6	0
Mobile parks	0	7.0
Construction	0	1.4
Housing	0	1.8
Total	$39.1	$38.2

As for loans by geographic origin, we are providing this information on the outstanding balances for guaranteed loans and revolving loans by area office as of September 30, 1988:

	($ in millions)	
Guaranteed	Revolving	
Aberdeen	$8.5	$13.5
Albuquerque	23.4	11.7
Anadarko	1.8	2.0
Billings	6.0	10.0
Eastern	33.9	3.3
Juneau	14.8	13.2
Minneapolis	19.2	9.4
Muskogee	5.1	4.6
Navajo	17.7	2.7
Phoenix	18.0	9.8
Portland	20.8	18.2
Sacramento	.7	1.9
Total	$169.9	$100.5

THE NAVAJO NATION

LEONARD HASKIE
INTERIM CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

IRVING BILLY
INTERIM VICE CHAIRMAN
THE NAVAJO TRIBAL COUNCIL

INDIAN FINANCING AND ECONOMIC DEVELOPMENT

S. 1203, S. 143 AND P.L. 100-442

TESTIMONY OF THE NAVAJO NATION

BEFORE THE

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC

JULY 27, 1989

MR. CHAIRMAN AND HONORABLE COMMITTEE MEMBERS, I AM LEONARD HASKIE, THE INTERIM CHAIRMAN OF THE NAVAJO TRIBAL COUNCIL OF THE NAVAJO NATION. I AM ACCOMPANIED TODAY BY MR. BRUCE KAISER, DIRECTOR OF THE NAVAJO TAX COMMISSION. ON BEHALF OF THE NAVAJO NATION, I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TO DISCUSS ONE OF THE

MOST IMPORTANT ISSUES AFFECTING NATIVE AMERICANS -- THE DEVELOPMENT OF INDIAN RESERVATION ECONOMIES.

LET ME PROVIDE YOU WITH SOME FACTS THAT ARE IMPORTANT TO YOUR UNDERSTANDING OF THE NEED FOR THIS LEGISLATION. THE NAVAJO NATION COVERS 25,000 SQUARE MILES, AN AREA ABOUT THE SIZE OF WEST VIRGINIA, SPANNING THE STATES OF ARIZONA, NEW MEXICO AND UTAH. IT IS ESTIMATED THAT OVER 160,000 NAVAJOS CURRENTLY RESIDE WITHIN THE BOUNDARIES OF THE RESERVATION, HOWEVER, OUR OVERALL GROWTH RATE IS APPROXIMATELY 3% -- WHICH IS 3 TIMES GREATER THAN THE REST OF THE UNITED STATES. ACCORDING TO THE 1980 CENSUS, OUR PER CAPITA INCOME IS APPROXIMATELY $2,400 PER YEAR -- ABOUT 33% OF THAT OF THE SURROUNDING STATES. WHILE CURRENT UNEMPLOYMENT IN THE UNITED STATES HAS BEEN REPORTED TO BE 5.3%, NAVAJO UNEMPLOYMENT IS APPROXIMATELY 32%.

MANY AREAS WITHIN THE NAVAJO NATION HAVE LITTLE OR NO INFRASTRUCTURE. MOST OF OUR PEOPLE CANNOT GET TO THEIR HOMES WITHOUT TRAVELING OVER DIRT ROADS. ABOUT 60% OF NAVAJO FAMILIES MUST LIVE IN DEPLORABLE CONDITIONS, WITHOUT RUNNING WATER, ELECTRICITY, OR INDOOR SANITARY FACILITIES.

A HOST OF SOCIAL PROBLEMS HAVE RESULTED FROM THE CONDITIONS WITHIN THE NATION. SUBSTANCE ABUSE, PRIMARILY ALCOHOLISM, IS A CRITICAL PROBLEM. IT IS ESTIMATED THAT OVER 35% OF OUR PEOPLE HAVE AN ALCOHOL PROBLEM. IN MANY WAYS, WE COMPARE TO POVERTY STRICKEN THIRD WORLD NATIONS.

IN STARK CONTRAST TO THE POVERTY ON THE RESERVATION, WE HAVE A WIDE ARRAY OF ASSETS -- SUCH AS A LARGE WORKFORCE, NATURAL RESOURCES AND AN IDEAL LOCATION -- WHICH WITH PROPER MANAGEMENT, AND INCENTIVES FOR DEVELOPMENT, CAN PULL US OUT OF OUR POVERTY CYCLE. TO DATE, WE HAVE BEEN PROVIDED WELFARE ASSISTANCE BY THE FEDERAL GOVERNMENT BUT WE HAVE NOT BEEN ASSISTED IN DEVELOPING THE PROPER TOOLS TO IMPLEMENT AN ECONOMIC DEVELOPMENT PROGRAM THAT WOULD INCREASE INCOME TO THE TRIBE AND PROVIDE JOB OPPORTUNITIES TO NAVAJO WORKERS. WE APPLAUD THIS COMMITTEE AND YOUR EFFORTS TO PROVIDE THESE TOOLS THROUGH THE ENACTMENT OF THE INDIAN FINANCING ACT AMENDMENTS OF 1988 AND THROUGH THE CONSIDERATION OF S. 1203 AND S. 143.

FOR SOME TIME, WE HAVE BEEN IMPLEMENTING A BUSINESS DEVELOPMENT PROGRAM. WE HAVE MET WITH MANY COMPANIES, AND WHILE WE HAVE HAD SOME SUCCESS, SEVERAL COMPANIES HAVE CHOSEN NOT TO LOCATE ON RESERVATION LANDS. SOME MAJOR CONCERNS EXPRESSED BY THESE COMPANIES WERE DOUBLE TAXATION, THAT IS STATE AND TRIBAL TAXATION, AND THE LACK OF INFRASTRUCTURE.

THE BUSINESS COMMUNITY IS RELUCTANT TO LOCATE THEIR ACTIVITIES ON THE NAVAJO NATION WHERE THEY WILL IN ALL LIKELIHOOD BE REQUIRED TO PAY BOTH STATE AND TRIBAL TAX. THE PRESENCE OF DOUBLE TAXATION SIGNIFICANTLY LIMITS THE ABILITY OF THE TRIBE TO INCREASE TRIBAL TAX REVENUES.

WHILE THE TRIBE IS IN NEED OF THE REVENUES THAT MAY BE RAISED FROM BUSINESSES ON THE RESERVATION, IT IS CONSIDERING THE POSSIBILITY OF WORKING OUT A TAX SHARING AGREEMENT WITH THE STATES. THE TRIBE HAS PARTICIPATED WITH NEW MEXICO IN A JOINT TASK FORCE CONSISTING OF MEMBERS FROM THE TRIBE, THE NEW MEXICO LEGISLATURE AND INDUSTRY TO TRY TO FIND A SOLUTION TO THE DOUBLE TAXATION PROBLEM. WE BELIEVE, HOWEVER, THAT PART OF THE LONG TERM ANSWER IS TO PROVIDE FEDERAL TAX INCENTIVES FOR BUSINESSES TO LOCATE ON INDIAN LANDS. FEDERAL TAX INCENTIVES CAN HELP US MITIGATE THE ADVERSE AFFECT THAT STATE TAXATION ON INDIAN LANDS IS HAVING ON RESERVATION ECONOMIES. MOREOVER, BY MAKING THE RESERVATION A MORE COMPETITIVE, ATTRACTIVE BUSINESS LOCATION, NEEDED REVENUES WILL BE GENERATED WHICH WILL ENABLE US TO PROVIDE BADLY NEEDED INFRASTRUCTURE AND TO PROMOTE BUSINESS DEVELOPMENT.

S. 1203 -- THE INDIAN DEVELOPMENT ACT -- HELPS TO ACHIEVE THESE GOALS BY PROVIDING INVESTMENT INCENTIVES TO ENCOURAGE INCREASED INVESTMENT BY EXISTING BUSINESSES AND ALSO TO FACILITATE NEW BUSINESS DEVELOPMENT. THE ALLOWANCE OF NONRECOGNITION OF GAIN ON THE SALE OF INDIAN RESERVATION PROPERTY ENCOURAGES BUSINESSES TO REINVEST IN PROPERTY WITHIN THE NAVAJO NATION. THE TARGETED JOBS CREDIT WILL PERMIT BUSINESSES TO REDUCE THEIR FEDERAL TAX OBLIGATIONS AS WELL AS TO HELP REDUCE THE LEVEL OF UNEMPLOYMENT ON THE RESERVATION. FURTHERMORE, S. 1203 ADAPTS THE "POSSESSIONS TAX CREDIT" WHICH WILL PERMIT U.S. FIRMS TO CLAIM A CREDIT AGAINST THEIR

FEDERAL INCOME TAX LIABILITIES WITH RESPECT TO THE INCOME PRODUCED ON THE RESERVATION.

THIS TAX CREDIT HAS SPURRED GREAT ECONOMIC DEVELOPMENT IN U.S. POSSESSIONS, SUCH AS PUERTO RICO AND THE VIRGIN ISLANDS. FOR EXAMPLE, PUERTO RICO, WHERE AMERICAN COMPANIES HAVE ENJOYED THIS TAX CREDIT SINCE 1921, WAS TRANSFORMED FROM THE POORHOUSE OF THE CARIBBEAN INTO ONE OF ITS RICHEST INDUSTRIAL CENTERS. THE TAX CREDIT LURED HUNDREDS OF U.S. INDUSTRIES, WHERE THEIR INVESTMENTS CREATED THOUSANDS OF JOBS. ITS GROSS NATIONAL PRODUCT GREW AT NEARLY DOUBLE THE U.S. RATE BETWEEN 1950 AND 1970. TRIBAL ECONOMIES CAN AND NEED TO HAVE THE SAME EXPERIENCE.

SELF-DETERMINATION FOR TRIBAL GOVERNMENTS CANNOT BE SEPARATED FROM ECONOMIC DEVELOPMENT. TRIBAL GOVERNMENTS CANNOT RAISE THE NECESSARY REVENUES TO PROVIDE ESSENTIAL GOVERNMENTAL SERVICES UNLESS ECONOMIC INCENTIVES ARE PROVIDED FOR BUSINESSES TO LOCATE ON INDIAN LANDS. WE, THEREFORE, STRONGLY SUPPORT THE PASSAGE OF S. 1203.

FOR THE SAME REASONS, WE SUPPORT THE CONCEPTS CONTAINED IN S. 143 -- THE INDIAN DEVELOPMENT FINANCE CORPORATION ACT. THIS PROPOSED LEGISLATION WOULD CREATE A JOINT FEDERAL-TRIBAL, SEMI-AUTONOMOUS DEVELOPMENT INSTITUTION TO SUPPORT THE FORMATION OF INDIVIDUAL INDIAN-OWNED ENTERPRISES.

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MANY NAVAJOS WHO DESIRE TO ESTABLISH A BUSINESS ON THE RESERVATION ENCOUNTER SEVERAL OBSTACLES, INCLUDING THE LACK OF INDIVIDUAL CAPITAL AND THE INABILITY OF NAVAJO BUSINESSMEN TO PROVIDE COLLATERAL. CONSEQUENTLY, PRIVATE FINANCING BECOMES DIFFICULT IF NOT IMPOSSIBLE. IN ADDITION, LIKE ALL BUSINESSMEN, MANY NATIVE AMERICANS REQUIRE TECHNICAL ASSISTANCE FOR PROPER BUSINESS MANAGEMENT. YET, MOST NAVAJO BUSINESSMEN CANNOT FINANCE THE TECHNICAL ASSISTANCE THAT THEIR BUSINESSES REQUIRE.

THE INDIAN DEVELOPMENT FINANCE CORPORATION ACT WILL HELP REMEDY THESE PROBLEMS BY FURNISHING CAPITAL, BUSINESS ASSISTANCE, DIRECT LOANS AND LOAN GUARANTEES. THE PROPOSED LEGISLATION PROVIDES AN INNOVATIVE APPROACH THAT WOULD PERMIT TRIBAL PARTICIPATION IN THE DECISION-MAKING PROCESS -- A KEY TO ENSURING SUCCESSFUL INDIAN ECONOMIC DEVELOPMENT.

I WOULD LIKE, HOWEVER, FOR THE COMMITTEE TO CONSIDER CERTAIN MODIFICATIONS TO THE BILL AS PROPOSED. SECTION 103 STATES THAT THE CORPORATION HAS THE POWER "TO ESTABLISH ONE OR MORE REGIONAL OFFICES IN ORDER TO MORE EFFICIENTLY SERVE THE WIDELY DISBURSED INDIAN POPULATION." THE NAVAJO NATION BELIEVES THAT THE PROPOSED STATUTE MUST INCLUDE A REGIONAL ENTITY IN THE SOUTHWEST AS APPROXIMATELY FIFTY PERCENT OF ALL INDIANS IN THE UNITED STATES LIVE IN THE SOUTHWEST. SUCH DECENTRALIZATION ALSO SERVES POTENTIAL CLIENTS BETTER.

SECTION 203 SETS FORTH THE AUTHORITY OF THE

DEVELOPMENT CORPORATION TO ISSUE LOANS. IN REVIEWING THE LOAN APPLICATIONS, THE NAVAJO NATION BELIEVES THAT ALL PROPOSALS SHOULD BE ACTED ON WITHIN A REASONABLE TIME. BUSINESSES AND ENTREPRENEURS CANNOT AFFORD TO STALL THEIR GROWTH AND DEVELOPMENT PLANS WHILE THEIR PROPOSAL FOR FINANCING IS BEING SCRUTINIZED. THE STATUTE SHOULD IMPOSE SUCH A REQUIREMENT TO GUARD AGAINST LENGTHY REVIEW PROCEDURES. THIS IS AN IMPORTANT PIECE OF LEGISLATION THAT WOULD SERVE AS A STRONG COMPANION TO S. 1203.

WE COMMEND YOU, MR. CHAIRMAN, AND THE COMMITTEE FOR ITS ACTIONS WHICH ULTIMATELY LED TO THE PASSAGE OF THE INDIAN FINANCING ACT AMENDMENTS. WE VIEW THE ABILITY TO OBTAIN A BIA GUARANTEE OF LOANS AND BOND ISSUANCES, AND THE ABILITY TO CREATE A SECONDARY MARKET FOR THEM, AS A GREAT OPPORTUNITY. WE VIEW THIS OPPORTUNITY AS AN AVENUE FOR THE FINANCING OF INDIAN ENTERPRISES THAT HAS LONG BEEN NEEDED.

UNFORTUNATELY, THERE HAS BEEN A DELAY IN IMPLEMENTING THE AMENDMENTS. WE ARE VERY ANXIOUS TO USE THIS VALUABLE TOOL. AS A MATTER OF FACT, NAVAJO AGRICULTURAL PRODUCTS INDUSTRY (NAPI) HAS REQUESTED ASSISTANCE FROM THE BIA PURSUANT TO THE AUTHORITY PROVIDED TO THE BIA UNDER THE INDIAN FINANCING ACT, AS AMENDED.

NAPI PRESENTLY HAS AN $18 MILLION LOAN OUTSTANDING WHICH IT NEEDS TO RESRUCTURE. NAPI WOULD GREATLY BENEFIT FROM THE OPPORTUNITY PROVIDED BY THE INDIAN FINANCING ACT IF

IT COULD PLACE A BIA GUARANTEED LONG-TERM BOND ISSUANCE IN THE MARKET. IN DECEMBER OF 1988 A FORMAL REQUEST WAS MADE OF THE BIA TO GUARANTEE THE AUTHORIZED AMOUNT OF A $25 MILLION LONG-TERM BOND ISSUANCE WITH A VIEW TO ISSUING THE BONDS IN MARCH, 1989. THE REQUEST WAS DENIED BECAUSE THE BIA HAD NOT YET PROMULGATED REGULATIONS TO IMPLEMENT THE STATUTE, NOR HAD IT RECEIVED APPROPRIATIONS THAT WOULD SUPPORT IT. THE TRIBE HAS RECENTLY MADE ANOTHER INFORMAL INQUIRY AND THE BIA RESPONDED THAT IT HOPES TO PROMULGATE FINAL RULES BY DECEMBER 1989.

WHILE THE TRIBE APPRECIATES THE EFFORTS OF THE CONGRESS AND THE BIA TO PROVIDE THIS OPPORTUNITY, NAPI IS IN GREAT NEED OF ASSISTANCE NOW. SIMILARLY, A NUMBER OF OTHER TRIBAL ENTERPRISES NEED FINANCING FOR EXPANSION AND DEVELOPMENT. WE LOOK FORWARD TO THE ISSUANCE OF PROPOSED RULES SHORTLY AND PROMULGATION OF FINAL REGULATIONS BY THE END OF THE YEAR, IF NOT SOONER.

I APPRECIATE THE OPPORTUNITY TO COMMENT ON THESE SPECIFIC LEGISLATIVE PROPOSALS, AND IN ADDITION WOULD LIKE TO OFFER SUGGESTIONS THAT MAY COMPLEMENT ANY INDIAN ECONOMIC DEVELOPMENT BILL. MANY INVESTORS ARE HESITANT TO MAKE INVESTMENTS ON INDIAN LANDS BECAUSE OF THE POLITICAL AND COMMERCIAL UNCERTAINTIES PRESENTED. I BELIEVE THAT THE CREATION OF A RISK-INSURANCE PROGRAM WOULD MITIGATE THESE UNCERTAINTIES. SUCH A PROGRAM COULD BE MODELED AFTER INSURANCE PROGRAMS OFFERED BY THE OVERSEAS PRIVATE INVESTMENT

CORPORATION (OPIC), A FEDERALLY-CHARTERED INSTITUTION CREATED TO REDUCE THE UNCERTAINTY ASSOCIATED WITH INVESTMENT IN DEVELOPING THIRD-WORLD NATIONS, OR THE FOREIGN CREDIT INSURANCE ASSOCIATION (FCIA), SPONSORED BY AN ASSOCIATION OF PRIVATE INSURANCE COMPANIES IN CONJUCTION WITH THE EXPORT-IMPORT BANK. SOME FORM OF INSURANCE WOULD GREATLY ENHANCE THE ATTRACTIVENESS OF INVESTMENT ON INDIAN LANDS.

IN CONCLUSION, I AM DELIGHTED THAT THE COMMITTEE IS EXPLORING VARIOUS ALTERNATIVES TO ENCOURAGE ECONOMIC DEVELOPMENT ON INDIAN LANDS. INCREASED PUBLIC AND PRIVATE SECTOR SUPPORT FOR DEVELOPMENT IS NECESSARY IN ORDER TO CREATE JOB OPPORTUNITIES, ALLEVIATE HARSH SOCIAL CONDITIONS AND ASSIST THE NAVAJO NATION IN GAINING GREATER ECONOMIC SELF-SUFFICIENCY.

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
Hearing on S.143
Indian Development Finance Corporation,
S.1203 Indian Economic Development Act of 1989,
and the Indian Finance Act Amendments of 1988 (PL 100-442)

Thursday, July 27, 1989
9:30 a.m. - Senate Russell 485

OPENING STATEMENT

Mr. Chairman and members of the Committee, thank you for this opportunity to again appear before the Senate Select Committee on Indian Affairs.

My name is Steven Stallings, I am an enrolled member of the Rincon Band of San Luiseno Indians of California. I am here in my capacity as President of the National Center for American Indian Enterprise Development.

The National Center is a not-for-profit management consulting organization formed in 1969 to assist American Indians to achieve self-sufficiency through business and economic development. We have acquired over $150 million in financing and business opportunities for Indians while starting up 800 new businesses and creating 3,000 new jobs. This has been accomplished with a failure rate of less than 5%.

I wish to again congratulate the committee on its fine work and a continuing commitment to enhance the economic well being of our nations first Americans. This is evidenced by the excellent pieces of legislation before us and the history and record of this Committee. You are creating a lasting impact for future economic self-sufficiency. My comments are as follows:

S.143 INDIAN DEVELOPMENT FINANCE CORPORATION (IDFC)

We urge favorable Senate consideration of this Bill and refer you to our previous testimony in the 100th Congress. We offer further testimony below in support of S.142.

Many of the businesses we serve experience difficulty obtaining capital to grow. Many of the Indian businesses have insufficient equity and collateral to qualify for conventional bank lending. Banks are reluctant to lend to businesses on reservations as Indian law tends to restrict a lender's ability to collect in the event of a default. We recently surveyed 121 clients and found that over 60% of these Indian firms who had attempted to borrow money could not obtain a loan at all or could not obtain a loan at reasonable terms.

We believe that IDFC can lend/invest to Indian-owned businesses successfully. We have a successful track record packaging Small Business Administration guaranteed loans, so we know the problems of high debt-equity ratios and limited collateral can be dealt with. We have in-depth information on a substantial number of the potential borrowers for IDFC, many of whom are clients that we have helped get into business. Since IDFC will specialize in Indian business lending/investing, we can generate a sufficient flow of venture proposals, so that IDFC can maintain and keep current the special expertise required to lend to tribal enterprises and reservation-based businesses. Additionally, IDFC's ongoing management consulting will reduce failure and risk.

After a careful review of alternative financial institutions, we fully support the IDFC concept, as a unique type of financial institution because it has the highest leverage, lowest risk, utilizes consulting in client servicing, and is the easiest to start due to a minimum of regulatory requirements. Furthermore, IDFC unlike a bank which makes primarily short term loans, will specialize in long-term capital which is more appropriate to the needs of growing Indian companies.

The IDFC should seek government, foundation, and corporate support in order to capitalize. While IDFC will use banker's criteria to evaluate repayment ability, Indians want controlling interest to assure that the IDFC makes the extra effort required to make financing available which conventional institutions would decline as too risky. Earnings to the IDFC will be reinvested to make additional loans/investments or used to further programs of management assistance and training for Indian businesses and tribes.

The IDFC will enable the government to assist Indian business development throughout the U.S. Our organization is based on the principle that we, as Indian people must initiate the actions needed to solve our problems. Indian-owned enterprises will help us achieve economic independence, both on and off the reservations, and will help in arresting tendencies toward dependency, chronic unemployment, and community deterioration. An emerging Indian entrepreneurial spirit is contributing to a new traditional of self-help and success.

The IDFC serves as a vehicle to attract private capital for Indian economic development, building on capabilities of Indian entrepreneurs to expand their businesses and create new ones, providing new employment and new ownership opportunities. The IDFC by attracting public capital as well, will also serve as a catalyst for promoting public-private partnerships leading toward economic self-sufficiency for Indian communities.

The IDFC is a new and important initiative in business and economic development. The IDFC will provide Indian control of a source of capital tailored to the financing needs of growing Indian-owned businesses. IDFC provides financing to enterprises near and on reservations, which are, in effect, enterprise zones. The Fund will act as a catalyst in establishing successful Indian businesses throughout the U.S.

A strong private sector is one of the necessary components for Indian self-sufficiency. An Indian private sector provides jobs, trains Indians as managers, provides needed services especially in small communities and is a model of Indian success. Good Indian managers from private businesses are often the same people who serve on the tribal councils and boards of community organizations.

The Indian businesses do business with each other on a regular basis. As it is difficult to pinpoint actual demand that will be realized, it is likewise difficult to forecast purchase of goods and services, but from our experience, the multiplier effects will benefit the Indian communities where IDFC will operate.

Forecasting total taxes would require forecasting taxable profits of all borrowers. The profits/taxes according to our financial projections will approach $6,000,000 in the first five years.

The IDFC will provide opportunities for training in financial services, extending programs in business planning and management for American Indians, as well as new career opportunities for American Indians. Just as significant, the IDFC will provide an opportunity for Indians to hold senior management jobs in financial services.

Additionally, the IDFC will serve as an investment vehicle for tribes to maximize returns to tribal trust funds in a financial institution that is designed to be responsive to Indian concerns.

S.1203 INDIAN ECONOMIC DEVELOPMENT ACT OF 1989

We urge the Senate's favorable consideration of S.1203 because the troublesome requirements that tribes remove their sovereignty immunity for suit by an investor as well as Federal grants and loan guarantees has been removed from the original bill. The proposed incentives for investments and business operations, and as outlined in the Act, include four principle provisions:

First, investment tax credits. A 5 percent credit would be allowed for personal property. A credit of 20 percent would be allowed for new construction property. Investment in infrastructure would be allowed a 10 percent credit;

Second, nonrecognition of gain on the sale of reservation property would be allowed where reinvestment is made on an Indian reservation within one year;

Third, economically disadvantaged members of a federally recognized Indian tribe are classified as a targeted group for purposes of the Targeted Jobs Tax Credit. The credit amount is generally equal to 40 percent of the first $6,000 of wages paid to an eligible recipient in the first year of employment; and

Fourth, the bill adopts the "possessions tax credit" (also known as the "section 936" provisions, after the relevant section in the Internal Revenue Code) to apply to businesses operating on the reservation of a federally recognized Indian tribe. Income U.S. firms earn from business operations are exempt from Federal Corporate income tax.

While we all are hailing this bill as the "Marshall Plan" for Indian tribes, we must remember that the plan to rebuild Europe after War II, required extensive investments of funds and manpower by the United States.

In an effort to assess these new industrial development tax incentives, we recently conducted interviews with corporate executives responsible for personnel/human resources, materials, logistics, telecommunications, and facilities and industrial engineering. The collected information was evaluated for both the general requirements of large business as well as for the specific

attributes desired by each company. This information was presented in our Joint Venture study to give readers a synopsis of corporate thinking as it relates to long-term corporate involvement and investment.

Most corporate managers considered the availability of highly trained personnel at a new location as the most important factor in a new site decision. They claimed that skilled manufacturing workers, especially engineers, were difficult and costly to move.

Once a new labor force is hired or transferred, it is extremely important that the company was able to keep employees; thus, additional areas of concern were:

(a) Educational Facilities. The proximity of a good college and, more specifically, a good engineering school is key. The availability of good schools is important in order to offer an employee a real future with the company. Proper schooling is essential for an employee to upgrade his/her skills and qualifications for advancement opportunities.

(b) Community/Convenience. The availability of comfortable housing, proper schools, convenience stores, recreational sites, and appropriate religious facilities are amenities examined when considering a site to ensure that employees' families are happy.

Cost-oriented reductions in operating expenses and tax advantages were the second most important factor. The existence of a Right-to-Work law was deemed an important consideration for

companies that viewed costs as the most important consideration. Companies saw potential savings in benefits by exploring arrangements with tribes, since tribal members sometimes have access to various tax breaks, federal and tribal health programs, for example.

The logistics of cost competitive locations would have to be assessed for: (1) accessibility by rail, air, and highways, (2) the availability of nearby small businesses for competitive subcontracting purposes, (3) educational facilities to provide training for employees and educational opportunities for their families as well, (4) the availability of affordable housing, and (5) accessibility to community conveniences.

Political advantage was rated as the third most important factor to consider when choosing an industrial site. Gaining additional support in Washington is extremely important to many companies. Specifically mentioned was Congressional support which would inspire companies to locate in an area. For these reasons, we refer the Committee to a report under development by the Native American Rights Fund entitled, "Doing Business: An Evaluation of Policy Alternatives to Encourage Private Enterprise on Indian Reservations". Two specific tandem measures will ensure an effective "Indian Marshall Plan" and efficient use of the provisions in S.1203:

1. A Source of Developmental Capital

U.S. efforts after WWII centered around long-term developmental capital to finance the rebuilding of Europe. To

rebuild Indian economies will require just such a source of long-term capital. Current public and private sources of capital do not meet these needs. Either S.1203 must have a provision for this new source of capital or S.143 must be looked at as a tandem piece of legislation to make any meaningful impacts and attract industry to the reservation. Indians will require their own source of participating investment in these developments on their reservations.

2. A Source of Managerial, Marketing & Technical Assistance (T/A)

U.S. efforts did not end with the injection of capital into Europe, it included various civilian and government authorities which brought the best of human and technical resources to bear on the problem of rebuilding Europe. NARF's report recommends a T/A effort called a Business Partnership Center to promote Indian reservation industrial development to assist in the development of ventures which could utilize the incentives of S.1203. Other T/A efforts should include financial marketing and management assistance.

INDIAN FINANCE ACT AMENDMENTS OF 1988 (PL 100-442)

The Senate performed an excellent public service with S.1360 in the 100th Congress by improving a very worthwhile law and public financing program. However, this Committee must make a concerted effort at reviewing management of this program, conformance with the law and intent of Congress.

There is a need to redefine the current program, invigorate the environment within which it operates and create a new

developmental philosophy. There is a fallacy in the BIA's view of itself as the "lender of last resort"; to have all other conventional capital markets turn down a deal, then pretend that you can make conventional credit decisions and manage a conventional debt financing program does not make sense.

The BIA must be directed to act in a developmental mode, viewing its sources of "statutory capital" as the "glue money" to make a deal work. Adopting this developmental approach will allow the BIA to act as the initiator, supporter and helper of beginning and growing Indian enterprises rather than their loan officer and critical analyzer.

CONCLUDING STATEMENT

Chairman and members of the Committee, at no time has there been or will there be any better opportunity to finally make an impact on the economic lives of American Indians. No one of these legislative actions will have the impact of combining the measures and others like Amendment of the Buy Indian Act, into one comprehensive legislative package designed to develop viable reservation economies.

Viewing the important work of Congress in the area as a legislative package, demonstrates a true understanding of the complexities of Indian community development and non-partisanship of Indian Affairs. We strongly recommend that the members of this Committee pursue a strong course of action for their adoption by the Congress and immediate implementation by the Administration. You have our full support and cooperation.

TESTIMONY OF RAYMOND GOETTING

ON BEHALF OF
LAGUNA INDUSTRIES AND THE NATIVE
AMERICAN INDUSTRIAL TRADE ASSOCIATION

BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

REGARDING
S. 143 AND S. 1203
July 27, 1989

Mr. Chairman, members of the Committee, thank you for the opportunity to appear before you today to comment on two pending bills which have been introduced in the Senate to aid economic development of Indian Tribes: S. 143, the Indian Development Finance Corporation Act, and S. 1203, the Indian Economic Development Act of 1989.

My name is Raymond Goetting. I am the Chairman of the Board of Directors of Laguna Industries, Inc., a wholly-owned New Mexico state-chartered corporation of the Pueblo of Laguna, a federally recognized Indian Tribe. For those members of the Committee who may be unfamiliar with the Pueblo of Laguna and Laguna Industries, please let me take a moment to briefly summarize some pertinent data to each.

The management and employees of Laguna Industries are justifiably proud of the steady growth of our company which results in a business profile today which shows a company with over 230 employees, 95 percent of whom are Native Americans, with an employee turnover rate of less than 2.8 percent, occupying a facility of over fifty thousand square feet with plant inventory in excess of 1.8 million dollars. Laguna Industries operates on an annual budget of 8.4 to 9 million dollars with no company debt and contracts in hand of over 30 million dollars. The satisfaction of the Department of Defense with our work has resulted in an ever-increasing level of contract awards. In addi-

tion, we have received recognition in the form of company and individual awards from the United Indian Development Association, the United States Department of Commerce, and the Small Business Administration. In summary, it is fair to say that the Pueblo of Laguna has over the last nine years made significant progress in turning its economy around and in building a uniquely successful industrial enterprise. Laguna Industries' contribution to Tribal and community economy is reflected in the attached statement.

Mr. Ronald Solimon, the President of Laguna Industries, also serves as Chairman of the Native American Industrial Trade Association (NAITA), and I am here representing that organization as well. NAITA is composed of and represents the interests of Tribally-owned industrial enterprises. The enterprises are at the forefront of the effort to build viable economies on Indian Reservations.

Mr. Chairman, I have taken the time to review these facts with you and the Committee so that you might appreciate the foundation of our experience through which we have evaluated S. 143 and S. 1203. With that in mind, let me address the details of each of these bills.

As a general matter, we support the plan of a separate organization which S..143 creates. I have a great deal of prior experience in economic development activities on various Indian Reservations, including my experience at the Pueblo of Laguna. In this prior experience, I have found that the spread of responsibilities through several federal agencies for all of the elements necessary to make a complete financial package makes it almost impossible to work with. It is not uncommon for each of a variety of agencies to have different criteria and priorities so that a financial package, for example, which is intended to be composed of funds from the Bureau of Indian Affairs, the Administration on Native Americans, the Department of Labor, etc., may cover appropriations from two or more fiscal years and have significantly different timeframes. Furthermore, one risks losing the first award by the time the last approval is secured. The dilemma is further complicated where private bank financing is involved along with loan guarantees, all overlaid with 8(a) set-aside provisions. I therefore applaud the single organization concept contained in the Bill.

In Section 102(a)(3), provision is made for long-term capital and working capital, but none is made for start-up capital. I would encourage the Committee to give some consideration to the need to provide funds for start-up capital under certain criteria. The planning process leading to the successful development of a good working relationship with a "mentor" such as Raytheon required approximately five years of effort, travel and other preliminary investigative-type expenditures in order to create our industry before actual start-up began. The planning effort for Laguna Industries took at least four to five years. We strongly believe that there is a need to provide for the necessary start-up capital and management and technical assistance to provide a sound planning process. Too often we see failures that are a result of the lack of thorough planning in the beginning before start-up. This leads to my next point.

The inclusion of continued support through a project once it is ongoing as contained in Section 102(a)(3)(C) is excellent. The unavailability of such managerial assistance and technical support in prior years has often resulted in failures that could have been avoided. The BIA, EDA, and other federal agencies which have attempted to assist Reservation-based Indian economic development have often been staffed with people experienced in governmental procedures, rather than people who are personally and technically competent and experienced in the different management disciplines necessary for a successful business or industry. By way of example, I want to stress that Laguna Industries was assisted for over two years with management guidance from Raytheon Service Corporation. Today we employ several highly skilled non-Indians with twenty-five to thirty years experience in relevant administrative, financial and technical areas. These people assist in guiding and training Laguna Pueblo members to ensure that their knowledge is passed on to members of the Pueblo who are willing to work in the Pueblo industries. This type of mentor relationship should be encouraged to the maximum degree possible in S. 143. Even though the Pueblo takes pride in the fact that we have a greater number of young college graduates now than in the past, our young people still require progressive experience in their chosen fields. Through an appropriate "mentor" relationship within Laguna

Industries, we are able to provide an environment in which that nurturing process can occur.

In Section 102(b)(2)(A), an Indian business enterprise is deemed to meet the requirements of the paragraph if the Corporation makes an independent determination as to sound organizational and financial structure. The Committee may wish to add language which requires a sound management plan and management capability. In addition to the lack of adequate capital, the lack of adequate management expertise has often been the downfall of many Tribal economic endeavors. And, as there is a difference between sound organizational structure and sound, skilled management, the Committee may wish to specifically address this matter in the legislation.

In Section 103(2), the corporation is empowered to make agreements and contracts with "persons, Indian Tribes, and private or government entities." I am not sure if Tribally-owned, state-chartered corporations such as Laguna Industries, Inc. are included in this language. As there may be Tribally-created and owned entities such as Laguna Industries that are not the same as the Tribe, and as they may not be viewed as private or governmental entities, it might be worthwhile for the Committee to consider expanding upon this language somewhat.

In Section 103(15), a number of different functions are included but, again, I think it is worth emphasizing that in addition to fiscal management and project development, ongoing management is critical to the success of an industry or business. The explicit mention in Section 15 of that type of management would appropriately highlight its importance.

In Section 104(b), there is no requirement that members of the board must have certain successful experience in a variety of business enterprises. Rather, in making appointments to the board, the President is merely obliged to take into account the experience of the individual appointees in private business enterprises and in development or commercial finance. We have found at Laguna Industries that having on our board of directors and within the company, in key positions, employees that have specific private sector, long-term technical and managerial experience has been critical to our success. I strongly urge the Committee to consider the feasibility of greater specificity for eligibility for a position on the board of directors. It is

absolutely essential that this board should be comprised of individuals from the real business world and not the political world. To the extent that it is feasible to make those requirements more explicit, we would encourage you to do so.

We also strongly support S. 1203. Presently, the burden of promoting Reservation economic development falls almost completely on Indian Tribal governments. This is a very heavy burden. S. 1203 will help to distribute the burden by providing the private sector with incentives to locate their businesses on Indian reservations. Such incentives are long overdue.

However, the Indian Economic Development Act of 1989 does not specifically provide for tax credits for Indian oil and gas development and production, including necessary transmission and transportation. A number of Indian Tribes produce oil and gas as well as other types of Reservation-based materials. S. 1203, as it currently drafted, does not specifically address the needs of these industries, whether they be owned by Tribal governments or Indian individuals. As this Committee, I am sure, is aware, the United States Supreme Court in its last term decided the case of Cotton Petroleum Corp. v. New Mexico Department of Taxation and Revenue. In that case, the Supreme Court held that states may tax reservation production of oil and gas by a non-Indian. The import of this decision affects a significant number of Tribes in New Mexico and elsewhere. The Pueblo of Laguna, for example, was for years dependent upon its uranium mineral-based economy. Similarly, other Tribes are dependent upon mineral extraction for their economies. We would strongly encourage this Committee to consider adding separate sections to deal explicitly with mineral development on Indian lands. There are many aspects of such development that do not lead themselves to general tax treatment along with manufacturing or other types of industries. Also, many Tribes may, like Laguna, currently face huge reclamation efforts to properly reclaim abandoned mines and mill tailings sites. There are special tax considerations and tax credits which would be extremely helpful to such reclamation efforts which may not be contemplated for inclusion in S. 1203 as it is currently drafted. We would encourage the Committee to examine the feasibility of including special tax credits and incentives for reclamation efforts.

In conclusion, Mr. Chairman and members of the Committee, on behalf of Laguna Industries, the Pueblo of Laguna and Indian people generally, we are deeply grateful to you for your interest, hard work, and dedication to assist the Indian Tribes of this country in their efforts at self-determination and economic self-sufficiency. Thank you very much for affording us the opportunity to appear before you today and present our views.

LAGUNA INDUSTRIES, INC.
P.O. BOX B
LAGUNA, NM 87026
PHONE (505) 552-6041

LAGUNA INDUSTRIES, INC.
ECONOMIC BENEFIT TO PUEBLO OF LAGUNA

	PRIOR YEARS (A)	1988 (B)	TOTAL TO DATE (C)
1. Salaries and Wages	$ 3,953,784	$ 3,460,500	$ 7,414,284
*Average Weekly Salaries and Wages 12/31/88		{ 77,795}	
*Current Annual Rate		{4,068,679}	
2. Employee Fringe and Incentives	469,608	800,000	1,269,608
3. Community Service Contribution -- TOTAL		8,332	8,332
(H.S. Band)		294	
(Y.A.F.L.)		1,000	
(H.S. Boosters)		200	
(St. Catherines)		355	
(P.O.L. Recreation Program)		1,408	
(A.I.P.C. Public Aid)		2,000	
(Council Travel, Education)		225	
(Laguna Veterans)		1,000	
(Elementary School Aid)		500	
(Laguna Tribe P.R.)		1,350	
TOTAL INDIRECT COMMUNITY BENEFIT	4,423,392	4,268,832	8,692,224
4. Rent to Pueblo of Laguna	290,732	134,184	424,916
5. Interest on Loan	104,200	150,225	254,425
6. **Repay Non-Interest Note		127,000	127,000
7. Dividend to Laguna Pueblo		450,000	450,000
TOTAL BENEFITS	$ 4,818,324	$ 5,130,241	$ 9,948,565

* Rates not included in -- for current status only
** Decision being reviewed by Board of Directors

TESTIMONY OF DAVID C. BRUNT OF U S WEST ON SENATE BILL 1203
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, D.C. JULY 27, 1989

Chairman Inouye, members of the Select Committee on Indian Affairs, I appreciate this opportunity to appear here today and testify in support of S. 1203, the Indian Economic Development Act of 1989.

My name is David Brunt and I am an economist for U S WEST, one of the seven regional holding companies formed out of the AT&T divestiture. I have masters degrees in economics and planning from the University of Arizona. In my current position I develop and evaluate business plans and strategies centering on the long distance companies who are customers of U S WEST.

In addition to my work for U S WEST, I am also tax commissioner for the Navajo Tribe, an appointment I've held for three years. I grew up and graduated from high school in Tuba City, Arizona, in the Navajo Nation. I've also been published on Native American tax issues.

Not only do the facts and statistics support the need for S. 1203, but my personal experience leads me to the same conclusion. In school, I competed with my Indian friends. My classmates, many of them, were sharp, competitive and confident they could do something to make a difference for their people. I know, had they had the educational and employment

opportunities I've had, many of them could easily surpass me, as some have. But too many of them through the years have fallen victim to despair. My sense is that very little has changed to improve this situation since 1965, when I graduated. In terms of human suffering, I see a growing problem that demands decisive action.

My personal background and tax post, along with my job at U S WEST give me a perspective on the issue before this committee. My company is committed to the economic development of the western United States and is aware of, and concerned about, the need for jobs and a decent economic foundation on this country's Indian lands.

The desire of American Indians to get the education and economic self sufficiency necessary to move ahead is strong. Native Americans are the poorest and often most forgotten of minority populations. Of America's 1.37 million Indians, 63 percent live on reservations, and nearly half of those live below the poverty level. Unemployment among Indian males between the ages of 20 and 60 is 50 percent, with some reservations having unemployment rates nearing 90 percent.

My employer's interest in economic development in the western states is fundamental. What is good for the west is good for U S WEST. Jobs, growth, prosperity--those things all translate into an increased demand for telephone service and economic success.

Beyond that, I believe U S WEST has a strong commitment to being a good corporate citizen. The company's record on minority purchasing and hiring is exemplary. In terms of having a positive impact on the communities it serves, U S WEST goes the extra mile. It actively seeks Native American owned business as suppliers. Of the nearly 260 total reservations in America 209 are in the U S WEST territory, with 89 percent of all Indians living on reservations in our 14 state serving area. U S WEST provides local telephone service to many of these reservations. It also provides, through the U S WEST Foundation, grants for projects including the study of resources needed for stimulation of economic development and the economic self sufficiency desired by American Indians.

U S WEST is generally supportive of any legislation that encourages economic development in rural areas. The company knows that rural network modernization programs are critical to providing the telecommunications infrastructure that is vital to creating jobs and business opportunities. U S WEST is continually working--within existing regulatory and business constraints and limitations--to modernize plants and equipment and improve the quality and expand the range of products and services that can be made available in rural areas.

From both a U S WEST perspective and my own personal perspective I applaud the creative thinking and important concepts embodied in S. 1203. This comprehensive approach to Indian development could go a long way toward bringing much needed economic vitality to the Indian reservations.

As I see it, the dilemma is this: While tribal governments have a right to levy and collect taxes, overlapping state and tribal taxation creates a disincentive to companies considering making investments on reservations. Tribal taxing authority is a little like holding a ticket for a plane which does not have any fuel--you can board, but you're not going anywhere. And yet, without economic growth, the future viability of tribal governments is in doubt. It is important to address this issue because Indian Tribes cannot fairly compete for investment capital until their right to govern no longer interferes with their ability to exist.

Where a tax disincentive exists, tax law provides an appropriate remedy. With the recent Cotton Petroleum supreme court decision the need for such a remedy is heightened. The benefits proposed for

reservation businesses in S. 1203 provide an appropriate remedy to double taxation and are consistent with benefits provided for other jurisdictions with independent taxing authority such as U. S. Possessions.

The reservation investment tax credit proposed in S. 1203 is an appropriate means of stimulating investment. The ultimate beneficiary of investment tax incentives are workers and customers. This is particularly true when regulated public utilities receive these benefits--the regulator insures that tax savings are ultimately passed onto the customer. For U S WEST, it can provide incentives to modernize network facilities sooner than we would without the incentives, assuming all other factors are equal.

The targeted jobs credit included in S. 1203 is an effective response to the employment conditions as they exist on reservations today. Targeted job credits have historically been used to encourage hiring practices that benefit economically disadvantaged people. In light of the severe economic conditions in Native American communities, it is appropriate to include qualifying members of tribal groups among those qualified for the targeted jobs credit.

Though I view S. 1203 as a fitting response to many hardships faced by American Indians, I am concerned about the practical administration and division of assets required to qualify income under this bill. A simpler approach would involve drafting rules to allocate taxable income through apportionment factors or sourcing rules. If U S WEST were required to form separate subsidiaries to serve each reservation, it would create an administrative problem which could exceed any real benefit. In fact, it is questionable whether regulated utilities could segregate assets from current rate base to form a separate subsidiary.

I want to touch just briefly on the revenue concerns which need to be considered with this legislation. There's no doubt in my mind that after this committee weighs the overall continuing cost--both in terms of human suffering and government support programs--against the benefits of an employed Native American work force and the positive tax impact from creating those jobs, the balance will clearly support this legislation. Tax incentives have historically been used to move economic activity between locations. They are particularly effective when the absence of pervasive market conditions would otherwise discourage investment in an area of economic hardship and can, I feel, be successfully applied in the context of Native American Nations.

We have also prepared a summary sheet dealing with technical issues to be considered by the committee. It is attached to the back of our written testimony, and we would like to have it made a part of the record.

In closing, let me again applaud the committee's interest in these issues and offer the continued support of U S WEST in addressing them. By working together I would hope we could achieve a sound tax policy that both supports economic growth and meets the special requirements of tribal sovereignty.

Thank you for the opportunity to testify. If you have any questions, I would be happy to try to answer them.

TECHNICAL SUPPLEMENT TO THE STATEMENT OF DAVID C. BRUNT OF U S WEST

BEFORE THE

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

JULY 27, 1989

Recapture of Indian Reservation Investment Tax Credits

The bill should provide that Section 47(a) (relating to the recapture of Investment Tax Credits on the disposition of qualifying property) should not apply to any transfer of ownership to tribal authorities. This would permit a company to transfer ownership in reservation assets to the tribe without penalty, and would reflect the spirit of this legislation.

Benefits of credits restricted to reservation area

The legislation should provide a minimum guarantee that the benefits of the tax incentives remain within the reservation. Such a guarantee might, in the case of a public utility, limit ratemaking treatment such that these credits would not be permitted to accrue to the benefit of non-reservation rate payers.

Refundable credit

The combination of reservation credits, investment tax credits and job tax credits could be in excess of federal income taxes paid with respect to taxable income. If small reservation businesses do not join in a consolidated return with non-reservation businesses, they could be unable to utilize all the benefits provided by S. 1203. To avoid this inequity the committee should consider enacting a refundable reservation credit.

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